

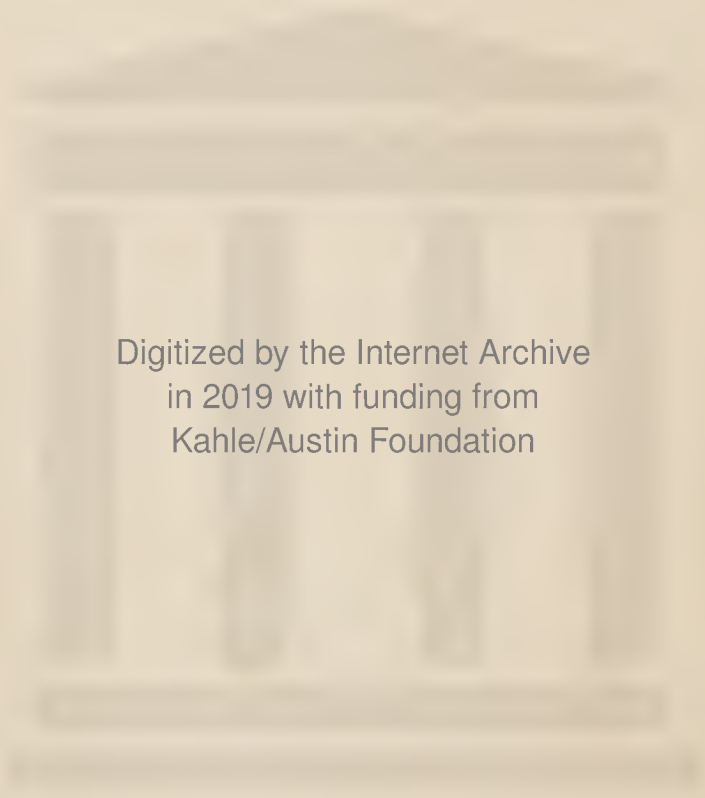
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A HANDY-BOOK
OF
THE LABOUR LAWS.





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A HANDY-BOOK
OF THE
LABOUR LAWS:

BEING
A Popular Guide

TO THE
EMPLOYERS AND WORKMEN ACT, 1875 ;
CONSPIRACY AND PROTECTION OF PROPERTY ACT, 1875 ;
TRADE UNION ACTS, 1871, 1876, AND 1893 ;
THE RECORDER'S ACT, 1868 ;
THE EMPLOYERS' LIABILITY ACT, 1880 ;
ARBITRATION ACT, 1872 ;
ETC., ETC., ETC.
WITH
Introductions, Notes, and the Authorised Rules and Forms,
FOR THE USE OF WORKMEN.

BY
GEORGE HOWELL, F.S.S., M.P.,
Author of "The Conflicts of Capital and Labour," "Trade Unionism, New and Old," etc.

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PREFACE TO THIRD EDITION, 1895.

THIS new edition of my Handy-Book of the Labour Laws has been prepared at the express desire of the Parliamentary Committee of the Trades Union Congress, supported by a delegate meeting of the trades, and by many personal applications for copies by officers of trade unions, and by the public, for some years past. In response to those solicitations this edition has been issued. The work was originally published in 1876, two editions being exhausted within the space of a few months. Since that date the book has been out of print, and so scarce that I was not able to procure a copy for myself, even for the purposes of revision, until Mr. Charles Fenwick, M.P., gave me his copy.

Many important changes have taken place in the interval, not only in the law, and especially as to procedure, but also as regards the position of workmen under the law. Most marvellous of all is the change in public opinion with respect to trade unions and labour. Trade unions are no longer tabooed. They are commended, and everywhere recognised as a great industrial and social force.

Their influence in Parliament is immense, and generally it is regarded as beneficial in its operation and valuable in its results. Every phase of labour is considered and dealt with from the trade union standpoint, in Government contracts and employment, and in all employments and contracts by municipal and all other local and public bodies, as well as by private firms, public and private companies, and by employers generally of whatever degree. Those changes, and the pressing demand for copies of my book, justify me in reissuing the work which was received with so much favour some eighteen years ago.

My object is the same now as it was then—to make the book a useful guide to all whom it may concern, employers and employed. It was never designed as a text-book for the legal profession, it would have been presumptuous in me to have aimed at such distinction. Competent legal advice will be required wherever technical difficulties arise; but in many cases the poor man can now act for himself in most ordinary cases of dispute as to wages, breaches of labour contracts, and the like. Courts of law under these Acts will not refuse justice simply because the poor man pleads his own case. But the litigant, whether as plaintiff or defendant, must know something of the law of the case, as well as the facts relating thereto. The following pages will be an aid in such circumstances, if they are carefully studied.

For the sake of clearness and simplicity I have rearranged the chapters altogether differently. The text of the Act in each case follows the introduction to such Act, and also the Rules of

Court and Procedure relating thereto. This is all the more necessary by reason of the fact that some of the Acts deal only with criminal offences, while others deal mainly with civil offences. Besides which the procedure is not in all cases quite the same. Furthermore, the legal forms in use differ according to the subject-matter of the complaint, or the remedy sought, as the case may be. It is in these respects that the non-legal mind is apt to fail. But the forms are generally so simple that a well-informed and careful workman will be able to fill them in for himself. The blank forms are obtainable by the plaintiff or defendant in all the cases required. Those that pertain wholly to the court, or to duties of the Registrar of the County Court, need not be particularised, as they are filled in and issued by the authority of the court. Special attention is therefore called mainly to such forms and procedure as are required for entering a plaint, or for the purposes of defence, as the case may be.

It is sometimes found to be necessary to cite a case in support of an application to the court, or a claim before the court, or in defence of any action. But usually it is not necessary to do so. Some references are given to cases in the notes to the Acts, in the event of such being required. If, however, the matter before the court has to be fought out upon cases cited, of decisions given, legal assistance will generally be needed. An instance is given of a recent case in which the secretary of the National Hosiery Federation obtained his reference from me, of a case under the Recorder's Act, which enabled the society to prosecute a treasurer of the union, and obtain a conviction,

in spite of some reluctance on the part of the Clerk to the Justices, and the technical plea that there was no co-partnership within the meaning of the Act of 1868, as laid down by the Lord Chief Justice (Coleridge) in the case of *Regina v. Robson*, in 1885.

I have deemed it advisable to include the Employers' Liability Act, 1880, in this issue; it had not been passed when the work was last published. I have also referred to the County Courts Consolidation Act, 1888, in connection with the County Court Rules, and have added a chapter relating to payment of wages, stoppages, and some other matters, and also a new chapter on Appeals and New Trial, as well as some further information respecting arbitration and conciliation in labour disputes. I have thus endeavoured to render the work as full and complete as possible; and with the view of making it reliable I have consulted several legal friends who have most readily rendered me valuable assistance, for which I tender to them my most grateful thanks.

GEORGE HOWELL.

December, 1894.

NOTE.—It was suggested to me that the original Prefaces and some matter in the Appendix should be retained for historical purposes connected with the trade union movement. But the large extension of the book, by the inclusion of new matter of present interest, is of more value than a reprint of what is now eighteen years old.—G. H.

A

HANDY BOOK OF THE LABOUR LAWS

FOR THE USE OF WORKMEN.

CHAPTER I.

THE EMPLOYERS AND WORKMEN ACT, 1875.

INTRODUCTION.

§ I.—THE true basis and scope of this Act ^{Short} are explained by its short title—Employers and ^{title.} Workmen Act, 1875 — which denotes that there shall be equality before the law as regards labour contracts. These are no longer treated as between Masters and Servants, but Employers and Workmen.

This fact was so well expressed by Lord Cross, ^{Scope of} then Mr. Cross, the Home Secretary, that we quote ^{the Act.} his own words: "For the future, contracts of hiring and service shall be as free and independent both for master and servant as any other contracts between other persons." Breach of a labour contract, therefore, is no longer a criminal offence, as formerly, but the subject of a civil action.

§ II.—The Act came into operation on the ^{Com-} first day of September, 1875. It is dated August ^{mence-} ^{ment of} the Act.

13th, 1875, which was also the date affixed to the first set of "Rules for carrying into effect the Jurisdiction given to Courts of Summary Jurisdiction in England by the Employers and Workmen Act, 1875, 38 & 39 Vict. c. 90," signed by the then Lord Chancellor.* The Rules now in force are dated July 16th, 1886.

Tribunals. The tribunals for hearing and determining "disputes" between employers and workmen are two :—

County Court, Sheriff Court, Civil Bill Court. § III.—1st. The County Court in England, the Sheriff Court in Scotland, and the Civil Bill Court in Ireland.

Powers as to ordering payment of money, set-off, rescission of contract, and taking security. The Act simply adds to the powers previously exercised by these courts, in relation to any dispute between an employer and a workman, the power to adjust and settle claims arising out of, or incidental to, the relation between them in respect to wages, damages for breach of contract, or other wrongs, and to rescind such contracts upon terms, or accept security for the performance of contracts instead of awarding damages for their breach.

Courts of Summary Jurisdiction. § IV.—2nd. Courts of Summary Jurisdiction. It is enacted that "a dispute between an employer and workman may be heard and determined by a Court of Summary Jurisdiction, and such court for the purposes of this Act shall be deemed to be a Court of Civil Jurisdiction." †

Jurisdiction of justices in disputes The Court of Summary Jurisdiction thus constituted comprises — (1.) Within the City of London, the Lord Mayor or an Alderman, sitting

* For the Rules at present in force see Chap. III.

† See also § 10 of this Act.

at the Mansion House or Guildhall Justice Room. between employers and workmen.*
 (2.) In any Police Court Division in the Metropolitan Police District, any Metropolitan Police

Magistrate sitting at a police court for that division. (3.) In any place where a stipendiary magistrate is, for the time being, acting, such stipendiary magistrate sitting at any police court or other appointed place. (4.) Elsewhere any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act. But, in the last instance, a complaint under this Act can only be heard and determined, and an order for imprisonment made, by two or more justices of the peace, sitting in petty sessions, at some place appointed for holding petty sessions.

In places where stipendiary magistrates are appointed and exercise jurisdiction, the county and borough magistrates have no jurisdiction under this Act. Stipendiary Magistrates.

The powers conferred on County Courts and Courts of Summary Jurisdiction are:—1st. The court may adjust and set-off one against the other all such claims on the part either of the employer or of the workman, arising out of or incidental to the relation between them, as the court may find subsisting, whether such claims are liquidated or unliquidated, and whether they are for wages, damages, or otherwise. Powers of the Court to adjust and set-off claims.

2nd. The court may also, if it thinks it just to do so under the circumstances, rescind any contract To rescind contracts.

* Where an employer claims damages for a workman's absence without notice, a dispute exists within the meaning of this section, and the justices have jurisdiction (Clemson v. Hubbard, 1 Ex. D. 179 ; 45 L. J. M. C. 69).

between the employer and the workman, upon such terms as to apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just.

To order
the perfor-
mance of
contract.

3rd. Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.*

SECURITY.

Mode of
giving
security.

§ VIII.—The security shall be an undertaking by the defendant, and one or more surety or sureties, that the defendant will perform his contract, subject, on non-performance, to the payment of a sum to be specified in the undertaking. The mode of giving security may be by an oral or written acknowledgment, under the direction of the court. A form of such undertaking is given in the Rules and Schedule.

Surety
may re-
cover pay-
ment and
costs from
defendant.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed a debt due to him from the defendant, and payment thereof may be ordered by a Court of Summary

* For §§ 5, 6, and 7 see *post*, pages 13-15.

Jurisdiction where the security has been given in such court.

The ordinary jurisdiction of the County Court is limited to £50, but actions for a larger amount may be tried with the consent of both parties.

Jurisdiction of County Court as to amount.

The jurisdiction of the Courts of Summary Jurisdiction is limited to £10, and no order can be made by any such court for payment of any sum exceeding £10, exclusive of costs, and no security can be required, either from the defendant or his surety or sureties, to an amount exceeding £10.

Jurisdiction of Courts of Summary Jurisdiction limited to £10.

In all other respects, the Courts of Summary Jurisdiction may order payment of any sums which they may find due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act conferred on the County Court.

Courts of Summary Jurisdiction, powers of, assimilated to the County Courts.

The powers here conferred are so just, and the means of enforcement so equitable, that any argument or observation in regard to them would be superfluous.

PROCEDURE.

The Act gives power to the Lord Chancellor from time to time to make, and when made to rescind, alter, and add to, Rules with respect to giving security, and for carrying into effect the jurisdiction given by the Act to Courts of Summary Jurisdiction, and, in particular, for the purpose of regulating the costs of any proceedings in such courts. In the exercise of this power the Lord Chancellor issued Rules, dated, in the first instance, August 13th, 1875. Those now in force are dated July 16th, 1886. To the Rules are appended Schedules of forms and costs.

Rules of Lord Chancellor as to procedure.

Date of Rules.

These Rules and forms carry out the intention of the Act, which makes the Courts of Summary Jurisdiction civil courts for the purposes of the Act, and assimilates the procedure and practice in these courts as nearly as possible to those in the County Courts.

The powers thus conferred on the Lord Chancellor appear at first sight to be greater than they really are. For the "Rules" of the Lord Chancellor cannot in any way override, enlarge, or alter the jurisdiction or power of these courts under the Act, or in any way contravene its spirit or intention. The Rules have reference to procedure alone.

County
Court
Judges,—
Rules as to
procedure.

Judges of County Courts have power also to make Rules with regard to procedure in their own courts. The Rules are prepared by a committee of five County Court Judges, called the Lord Chancellor's Committee. The Rules thus prepared are submitted to the Lord Chancellor and five other Law Lords for approval. The Rules first issued, as approved by the Lord Chancellor, came into force on the 2nd day of November, 1875, and the amended Rules came into force on the 3rd day of April, 1876. The Rules now in force are dated February 5th, 1892. The powers under the Act may be exercised without the parties being under the necessity of giving the notices required in other cases where a defendant makes a special defence or sets up a counter-claim against the plaintiff, or a claim to contribution, indemnity, or other remedy or relief against any other person, or desires to defend on behalf of others.

Date of
Rules.

JURISDICTION OF THE ACT.

The jurisdiction of the Act applies to persons and to things. The persons are employers and workmen.

1st. A workman, as defined by the Act, “means any person who, being a labourer, servant in husbandry, journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether above or under twenty-one years of age,” has entered into, or works under, a contract with an employer. Domestic or menial servants and seamen, or apprentices to the sea service, were formerly excluded from the provisions of the Act. But, in 1880, by the 43 & 44 Vict. c. 16, § 11, the provisions of § 13 of the Employers and Workmen Act, 1875, were extended to seamen. Consequently only domestic or menial servants are now excluded.

2nd. Employers are those who have a contract with a workman, and, from the nature of the above definition of a workman, must be those who employ workmen as defined by the Act.

THINGS.—The particular thing to which the Act refers is a contract between an employer and a workman.

The term workman under the Act “means any person who has entered into, or works under, a contract with an employer, whether the contract be made before or after the passing of the Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.”

It appears by the wording of this clause that

Workmen
as defined
by the Act.

Employers
within the
meaning
of the Act.

Jurisdic-
tion of the
Act as to
contract of
service.

Contract
as defined
by the Act.

“Im-
plied”
contract.

it must be a contract between the employer and his workman. But the use of the word “implied” gives to this clause a very wide meaning. A contract, however, is not within the Act unless it be either a contract for doing work as a workman, or a contract by a person personally to execute work or labour.

Subject
matter of
jurisdic-
tion under
the Act.

The subject matter of jurisdiction is “any dispute between an employer and a workman arising out of, or incidental to, their relation as such.” The word dispute, as here used, includes every claim which can be set up as a rightful cause of action, and, therefore, embraces wages, time, contracts, non-performance of duty, absenting from work, leaving an employer without notice or discharging a workman without notice, where notice is required by the terms of the contract or the custom of the trade, and similar matters, whenever they can become legitimate causes of action and cases for the courts.

Customs,
rules, and
regula-
tions
covered by
words—
implied
contract.

An implied contract will cover all recognised customs, rules, or regulations of the locality where the work or service is performed, and also the special rules or regulations of the employer or firm, if the workmen have, by working under them, given a tacit assent to them, provided that the contracting workman has not made an express stipulation to the contrary.

Labour
contracts
should be
express
and defi-
nite.

It follows, therefore, that it is most important that all labour contracts should be express and definite, orally or in writing. Where possible such contracts should be always in writing, for by this means only can workmen avoid disputes with their employers, and, in the event of litigation, prevent

ruinous costs in courts of law, either to themselves or to the societies of which they are members.

It is moreover important to recollect that no mere sentimental grievance will be accepted in a court of law as a plea for the non-performance of a contract. A man, having entered into a contract, is bound in honour, as well as in law, to perform his part of such contract, provided such contract be *bonâ fide*. A fair and honest contract is equally binding upon both parties thereto. Workmen, whilst insisting upon the fulfilment of all the conditions of a contract by employers, must remember that they too are bound to fulfil all such conditions. This is equity, as well as law.

Workmen must be particular in entering into contracts, and must not break them when made; and organised bodies of workmen must insist upon their members fulfilling all the conditions of the law honestly and fairly on their part, thereby preventing heavy costs, and ruinous disputes. It might be well if more prominence were given to the subject of contract, and breach of contract, in the rules of Trade Societies.

Cases, however, will occur which give rise to dispute; in every such case the defence must be *bonâ fide*.

In any case brought before the court it is the plaintiff's duty to prove that a contract existed, and the nature of such contract, and also that the defendant broke such contract without reasonable excuse, and that he (the plaintiff) suffered loss or injury thereby. In cases where there is no special contract the terms of employment are governed by the custom of the trade, and in all such cases

Pleas as to non-performance of contract.

Importance as to fulfilment of contract.

Proof of contract necessary to be given to the Court.

ample proof must be given that the custom contended for is generally recognised in the trade.

Plea as to
non-existence of
contract.

On the other side, the defendant must prove that there was no such contract, or that he (the defendant) had justifiable reasons for breaking it; or, in mitigation of damages, that the plaintiff did not suffer loss or injury sufficient to justify him in bringing the case before the court. In cases where a workman entitled to notice is summarily dismissed without sufficient cause, or suddenly leaves his employment without sufficient excuse, the actual damage suffered either by the employer or the workman must be strictly proved, and in such cases, if the workman obtains immediate employment elsewhere, or the employer obtains immediately the services of another workman, no action will lie, because, although there has been a breach of contract, no damage has arisen from the breach.

Other pleas may be advanced in mitigation of damages, but in all cases such pleas must be *bonâ fide*.

VALIDITY OF CONTRACTS.

Contracts,
validity of.

(1.) It is a principle of law that a consideration, *i.e.*, value received, or to be given, is essential to the validity of a contract, not under seal.

Agree-
ments ex-
empt from
stamp
duty.

(2.) Contracts must also be valid according to the general law.

(3.) Agreements, of the nature of contracts, under this Act are exempt from stamp duty.

MUTUALITY OF CONTRACTS.

Unequal
contracts.

Courts of law have declined to enforce unequal contracts between employers and workmen. In

such cases, the equity of the contract has been considered as essential to bind both parties, and by this Act contracts may be rescinded.

From this it would appear that a contract, to be mutual, must give corresponding rights to both parties; and, therefore, in those cases of frequent dispute, relating to discharge or leaving work without formal notice, the right to do so in the one case, would in equity give a similar right in the other, at least in the absence of usage or express agreement to the contrary effect.

Contracts to be valid should be mutual.

It should, however, be recollected that, if a contract really existed, whether orally or in writing, expressed or implied, and if one of the parties to such contract failed to enforce it, such failure on the part of one of the contracting parties would be no bar to proceedings on the other side. For instance, if the employer discharged a number of his workmen in violation of an existing contract, and the workmen so discharged failed to take steps to enforce it, their failure to seek legal remedy would be no set-off to a similar breach of contract on the part of any of the remaining workmen, if the employer brought them before the court. It is most important that this aspect of the case should be well understood. If A, an employer, broke his contract with B, C, D, and other workmen, E, F, G, and other workmen, would not, on that ground, be entitled to break their contract with A, nor could they plead such breach of contract, if any such existed, in mitigation of damages. If, however, the existence of the contract was disputed, the conduct of the employer could be cited as evidence.

Failure to enforce contract by one of the contracting parties no bar to proceedings on the part of the other.

To state it in a few words, the failure to enforce

Plea in mitigation of damages. a contract on the part of one of the parties to it does not annul the right of proceedings on the part of the other ; it would, no doubt, have some weight in regard to the amount of damages awarded by the court, but that would be the utmost.

CAPACITY TO CONTRACT.

Validity of contracts on the part of married women. (1.) Married women, prior to the passing of the Married Women's Property Act, 1882, were generally incapable of entering into a binding contract, and it seems that contracts could not be enforced against them under this Act.

Cases cited. Tomkinson v. West. In the case of Tomkinson v. West, a married woman, who was employed at weekly wages, left her employment without giving due notice. Being summoned, the magistrates refused to convict her on the ground that she, as a married woman, was incapable of contracting, and that consequently there was nothing to bind her as between her and her employer. It was held by the Court of Queen's Bench that the magistrates were right. (Easter Term, 1875.) And in the case of Hodkinson v. Green, occurring soon afterwards, where the justices ordered a married woman, working as a weaver in a mill, to pay compensation, relying upon the Married Women's Property Act, 1870, as giving her power to contract, the Court of Queen's Bench held that the justices were wrong. (Sittings after Easter Term, 1875.) It was also

Decision of Metropolitan magistrates. decided by two Metropolitan magistrates that contracts cannot be enforced against married women under this Act.

These decisions, however, seem to be set aside

to some extent by the Married Women's Property Act, 1882, whereby it was enacted that a married woman should be capable of entering into and rendering herself liable to the extent of her separate property on any contract, and sue and be sued as if she were a feme sole.

(2.) Minors are included under the Act as capable of entering into a contract under it. Minors competent to contract.

(3.) Apprentices under the Act are limited to those who are apprenticed to the business of a workman as defined by the Act, upon whose binding either no premium is paid, or the premium does not exceed £25, and apprentices bound under the provisions of the Acts relating to the relief of the poor. Apprentices, limitation as to, by the Act, § xii.

JURISDICTION OF JUSTICES.

§ V.—Any dispute between an apprentice to whom this Act applies and his master, arising out of or incidental to their relation as such, may be heard and determined by a Court of Summary Jurisdiction.* Jurisdiction of justices in disputes between masters and apprentices.

§ VI.—In a proceeding before a Court of Summary Jurisdiction, in relation to a dispute under this Act between a master and an apprentice, the section provides that the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract Powers of justices in respect of apprentices.

* Magistrates have jurisdiction where the summons is taken out after the relation of master and apprentice has ceased. (*Regi. v. Proud*, L. R. 1 C. C. R. 71; 36 L. J. M. C. 62; decided in 4 Geo. IV. c. 34, § 2.)

between an employer and a workman, and shall also have the following powers :—

- | | |
|---------------------------------|--|
| To order performance of duties. | (1.) It may make an order directing the apprentice to perform his duties under the apprenticeship ; and, |
| To rescind contract. | (2.) If it rescinds the instrument of apprenticeship it may, if it thinks it just to do so, order the whole or any part of the premium paid on the binding of the apprentice to be repaid. |

Imprisonment for disobeying order of the Court.	Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.
---	---

Order against surety of apprentice, and power to friend of apprentice to give security.	§ VII.—In a proceeding before a Court of Summary Jurisdiction, in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the good conduct of the apprentice, that person may, if the court so direct, be summoned, in like manner as if he were the defendant in such proceeding, to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorised to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.
---	--

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorised to inflict upon the apprentice.

As the power of imprisonment is retained by the Act in regard to apprentices, parents and guardians should exercise great care both with regard to the instrument of apprenticeship, and also as to the conduct of the apprentice during the term for which he is bound to serve. It is unfortunate that imprisonment is retained, inasmuch as it only tends to debase the apprentice who has to suffer it, and not to reform him.

Powers as to imprisonment not just or equal.

The penalty is, however, reduced to a minimum; but, nevertheless, the order may be repeated any number of times, if the apprentice refuses to fulfil his obligation, and persists in disregarding the order of the court.

No satisfactory reason can be given for retaining the power of imprisonment only with regard to the poorer class of apprentices, and not extending it to those who can afford to pay higher premiums. The limitation is certainly not a just one, and it mars the spirit of equality which generally pervades the Act. There is, however, greater reluctance than formerly to sentence apprentices to imprisonment, by magistrates and justices of the peace. Nevertheless, the power exists, and may be legally exercised.*

* For § 9, summary proceedings, and § 10, definitions, see the Act, Chap. II.

SET-OFF IN CASE OF FACTORY WORKERS.

Factory workers, set-off in case of, forfeitures, etc.

§ XI. prohibits any forfeiture, on the ground of absence or leaving work, being deducted or set-off in the case of women or children subject to the Factory Acts, against a claim for wages or other sum for work done, except to the amount of the damage (if any) which the employer may have sustained by reason of such absence or leaving work.

Employer may claim deductions for actual damage.

In the event of a claim made under this statute against an employer by a woman or child who has, in breach of contract, absented herself or himself, or left work, such employer cannot claim any such forfeits. He must pay for the work done, but he may claim to have an amount deducted sufficient to compensate him for any damage he may have sustained by such breach of contract on the part of women and children.

The section is narrowed and impaired by decisions of the Superior Courts.

This section is a great protection against the hardships arising from rules made in former times by the factory owners, especially in North and North-east Lancashire. It has, however, been considerably narrowed and impaired by the superior courts of law. It has been twice decided, in the case of a female operative, that, being engaged on piece-work by the week, and leaving her employment without proper notice, the section does not enable her to recover anything for the piece-work done in the broken week.

Application of the Act to Scotland. Application of the Act to Ireland.

§ XIV. extends the application of the Act to Scotland, and gives the necessary definitions.

§ XV. extends its application to Ireland, and gives the necessary definitions.

RULES OF THE LORD CHANCELLOR.

One of the many advantages arising out of this Act is the comparative inexpensiveness of its working. In all cases, except those involving legal and technical difficulties, and requiring great nicety of argument, workmen will be able to conduct their own case, either as plaintiff or defendant, if they follow closely the Rules hereinafter set forth.

Rules as to
procedure
by the
Lord
Chan-
cellor.

METHODS OF PROCEDURE IN COURTS OF SUMMARY JURISDICTION.

(1.) ENTRY OF PLAINT AND CAUSE OF ACTION.—A person desiring to take proceedings under the Employers and Workmen Act, 1875, must deliver to the clerk of the court particulars of claim in writing of the cause of action, to be embodied in, or annexed to the summons.

Methods
of pro-
cedure.

No misnomer or inaccurate description of any person or place, in any such complaint or summons, vitiates the same, so that the person or place be therein described so as to be commonly known.

Inaccurate
descrip-
tion not to
vitate the
plaint.

It is only necessary to give the substance of the cause of action, such as "withholding of wages," "wrongful dismissal," "balance of wages," and the like.

Substance
of cause of
action to
be given.

(2.) HEARING.—No notice is required to be given by the defendant of any set-off or counter-claim.

Set-off, or
counter-
claim.

The parties to the dispute are examined on oath, and also their wives and other witnesses who may be called.

Parties to
be exa-
mined on
oath.

If the plaintiff does not appear, the court may

Failure of

plaintiff to appear. award to the defendant, by way of costs and satisfaction for his attendance, such sum as, in its discretion, it shall think fit.

Failure of defendant to appear. If the defendant does not appear, or sufficiently excuse his absence, the court may adjourn the summons, or proceed to the hearing of the cause on the part of the plaintiff only, and the judgment thereupon shall be as valid as if both parties had attended.

Open Court. The court in all cases is an open court, to which the public have access.

Order for commitment. (3.) JUDGMENT SUMMONS.—No order for commitment may be made unless a summons, to appear and be examined on oath, shall have been personally served upon the judgment debtor.

This is a valuable protection against the abuse of the large powers given by the Debtors Act.

An order of commitment may be made under the Debtors Act, 1869, according to the form in the schedule.

Discharge after commitment on payment of amount. After an order of commitment for non-payment of money is issued, the defendant may, at any time before he is taken into custody, pay the officer the amount endorsed on the summons, and be discharged. All costs incurred by the plaintiff may be recovered.

Costs, by whom to be paid. (4.) COSTS.—The costs must be paid, in the first instances, by every person seeking the assistance of the court. These costs are given in the schedule.

Expenses for solicitor to be allowed. The court may allow any party the expense incurred in the employment of a solicitor, not exceeding 10s. when the claim exceeds 40s., and 15s. where it exceeds £5.

(5.) FORMS.—The forms used in the schedule shall be used. Forms to be used.

APPEALS.

There is no express provision for appeal against the decision of the courts, either in the Employers and Workmen Act, or in the Rules issued thereunder by the Lord Chancellor. It appears from the reading of the Act that an order by the Court of Summary Jurisdiction once completed is final, and cannot be varied or superseded, or the case reheard by the court, except in those instances expressly provided for, by way of a case stated by the justices, and by the Acts governing the courts in which the action is tried. No express provision as to appeal.

An order of the Court of Summary Jurisdiction must be treated as conclusive, in the same manner as an order of the justices under the Summary Jurisdiction Acts, only to be varied or set aside by a superior court in the event of an excess of jurisdiction, or of an erroneous decision in point of law. Order of the Court to be treated as conclusive.

Any case for the opinion of the superior courts must be under the authority and provisions of the Summary Jurisdiction Acts as before mentioned, by which Acts it appears that the court may state a case for the opinion of the superior courts. If the magistrates refuse improperly to state a case the Queen's Bench Division of the High Court of Justice has power to compel them to do so.* Case for the decision of a Superior Court.

In all such cases the appellant must give notice

* See Chap. XVII., Appeals, New Trial, etc.

of appeal in accordance with the provisions of the Act, and enter into recognizances, in such sum as the court may direct, to prosecute the appeal, and pay the costs of the respondent if the appeal is dismissed.*

* See Chap. XVII., Appeals, New Trial, etc.

CHAPTER II.

EMPLOYERS AND WORKMEN.

[38 & 39 VICT., CH. 90.]

AN Act to enlarge the powers of County Courts in respect A.D. 1875.
of disputes between Employers and Workmen, and to —
give other Courts a limited civil jurisdiction in respect
of such disputes. [13th August, 1875.]

Be it enacted as follows :

Preliminary.

I. This Act may be cited as the Employers and Work- Short title.
men Act, 1875.

II. This Act, except so far as it authorises any rules to Commence-
be made or other thing to be done at any time after the ment of
passing of this Act, shall come into operation on the first Act.
day of September one thousand eight hundred and seventy-
five.

PART I.

Jurisdiction—Jurisdiction of County Court.

III. In any proceeding before a county court in relation Power of
to any dispute between an employer and a workman arising county
out of or incidental to their relation as such (which dispute court as to
is hereinafter referred to as a dispute under this Act) the ordering of
court may, in addition to any jurisdiction it might have payment of
off, and re- money, set-

A.D. 1875. exercised if this Act had not passed, exercise all or any of the following powers ; that is to say,
 scission of contract and taking security.

- (1.) It may adjust and set-off the one against the other all such claims on the part either of the employer or of the workman arising out of or incidental to the relation between them, as the court may find to be subsisting, whether such claims are liquidated or unliquidated, and are for wages, damages, or otherwise ; and,
- (2.) If, having regard to all the circumstances of the case, it thinks it just to do so, it may rescind any contract between the employer and the workman upon such terms as to the apportionment of wages or other sums due thereunder, and as to the payment of wages or damages, or other sums due, as it thinks just ; and,
- (3.) Where the court might otherwise award damages for any breach of contract it may, if the defendant be willing to give security to the satisfaction of the court for the performance by him of so much of his contract as remains unperformed, with the consent of the plaintiff, accept such security, and order performance of the contract accordingly, in place either of the whole of the damages which would otherwise have been awarded, or some part of such damages.

The security shall be an undertaking by the defendant and one or more surety or sureties that the defendant will perform his contract, subject on non-performance to the payment of a sum to be specified in the undertaking.

Any sum paid by a surety on behalf of a defendant in respect of a security under this Act, together with all costs incurred by such surety in respect of such security, shall be deemed to be a debt due to him from the defendant ; and where such security has been given in or under the direction of a court of summary jurisdiction, that court may order payment to the surety of the sum which has so become due to him from the defendant.

A.D. 1875.

Court of Summary Jurisdiction.

IV. A dispute under this Act between an employer and a workman may be heard and determined by a court of summary jurisdiction, and such court, for the purposes of this Act, shall be deemed to be a court of civil jurisdiction, and in a proceeding in relation to any such dispute the court may order payment of any sum which it may find to be due as wages, or damages, or otherwise, and may exercise all or any of the powers by this Act conferred on a county court: Provided that in any proceeding in relation to any such dispute the court of summary jurisdiction:

Jurisdiction of justices in disputes between employers and workmen.

- (1.) Shall not exercise any jurisdiction where the amount claimed exceeds ten pounds; and
- (2.) Shall not make an order for the payment of any sum exceeding ten pounds, exclusive of the costs incurred in the case, and
- (3.) Shall not require security to an amount exceeding ten pounds from any defendant or his surety or sureties.

V. Any dispute between an apprentice to whom this Act applies and his master, arising out of or incidental to their relation as such, (which dispute is hereinafter referred to as a dispute under this Act,) may be heard and determined by a court of summary jurisdiction.

Jurisdiction of justices in disputes between masters and apprentices. Powers of justices in respect of apprentices.

VI. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, the court shall have the same powers as if the dispute were between an employer and a workman, and the master were the employer and the apprentice the workman, and the instrument of apprenticeship a contract between an employer and a workman, and shall also have the following powers:

- (1.) It may make an order directing the apprentice to perform his duties under the apprenticeship; and,
- (2.) If it rescinds the instrument of apprenticeship it may, if it thinks it just so to do, order the whole or any part of the premium paid on the binding of the apprentice to be repaid.

A.D. 1875. Where an order is made directing an apprentice to perform his duties under the apprenticeship, the court may, from time to time, if satisfied after the expiration of not less than one month from the date of the order that the apprentice has failed to comply therewith, order him to be imprisoned for a period not exceeding fourteen days.

Orders against surety of apprentice, and power to friend of apprentice to give security.

VII. In a proceeding before a court of summary jurisdiction in relation to a dispute under this Act between a master and an apprentice, if there is any person liable, under the instrument of apprenticeship, for the good conduct of the apprentice, that person may, if the court so direct, be summoned in like manner as if he were the defendant in such proceeding to attend on the hearing of the proceeding, and the court may, in addition to or in substitution for any order which the court is authorised to make against the apprentice, order the person so summoned to pay damages for any breach of the contract of apprenticeship to an amount not exceeding the limit (if any) to which he is liable under the instrument of apprenticeship.

The court may, if the person so summoned, or any other person, is willing to give security to the satisfaction of the court for the performance by the apprentice of his contract of apprenticeship, accept such security instead of or in mitigation of any punishment which it is authorised to inflict upon the apprentice.

PART II.

Procedure.

Mode of giving security.

VIII. A person may give security under this Act in a county court or court of summary jurisdiction by an oral or written acknowledgment in or under the direction of the court of the undertaking or condition by which and the sum for which he is bound, in such manner and form as may be prescribed by any rule for the time being in force, and in any case where security is so given, the court in or under the direction of which it is given may order payment

of any sum which may become due in pursuance of such A.D. 1875. security.

The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules with respect to giving security under this Act.

IX. Any dispute or matter in respect of which jurisdiction is given by this Act to a court of summary jurisdiction shall be deemed to be a matter on which that court has authority by law to make an order on complaint in pursuance of the Summary Jurisdiction Act, but shall not be deemed to be a criminal proceeding; and all powers by this Act conferred on a court of summary jurisdiction shall be deemed to be in addition to and not in derogation of any powers conferred on it by the Summary Jurisdiction Act, except that a warrant shall not be issued under that Act for apprehending any person other than an apprentice for failing to appear to answer a complaint in any proceeding under this Act, and that an order made by a court of summary jurisdiction under this Act for the payment of any money shall not be enforced by imprisonment except in the manner and under the conditions by this Act provided; and no goods or chattels shall be taken under a distress ordered by a court of summary jurisdiction which might not be taken under an execution issued by a county court.

A court of summary jurisdiction may direct any sum of money, for the payment of which it makes an order under this Act, to be paid by instalments, and may from time to time rescind or vary such order.

Any sum payable by any person under the order of a court of summary jurisdiction in pursuance of this Act, shall be deemed to be a debt due from him in pursuance of a judgment of a competent court within the meaning of the fifth section of the Debtors Act, 1869,* and may be enforced accordingly; and as regards any such debt a court of summary jurisdiction shall be deemed to be a court within the meaning of the said section.

* By § 5 of 31 & 32 Vict. c. 62, the Court has power, subject to certain restrictions, to commit to prison for not more than six weeks.

A.D. 1875. The Lord Chancellor may at any time after the passing of this Act, and from time to time make, and when made, rescind, alter, and add to, rules* for carrying into effect the jurisdiction by this Act given to a court of summary jurisdiction, and in particular for the purpose of regulating the cost of any proceedings in a court of summary jurisdiction, with power to provide that the same shall not exceed the costs which would in a similar case be incurred in a county court, and any rules so made in so far as they relate to the exercise of jurisdiction under the said fifth section of the Debtors Act, 1869, shall be deemed to be prescribed rules within the meaning of the said section.

PART III.

Definitions and Miscellaneous.

Definitions.

X. In this Act—

Defini-
tions:
“Work-
man.”

The expression “workman” does not include a domestic or menial servant, but save as aforesaid, means any person who, being a labourer, servant in husbandry,† journeyman, artificer,‡ handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of this Act, be express or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour.

“The Sum-
mary Juris-
diction
Act.”

See now 42
& 43 Vict.
c. 49—the

The expression “the Summary Jurisdiction Act” means [the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of Justices of the Peace out of sessions within

* See the Rules now in force, Chap. III.

† See *Davies v. Lord Berwick*, 3 E. & E. 549; 30 L. J. M. C. 84.

‡ See *Ex parte Ormerod*, 1 D. & L. 825; *Lilley v. Elwin*, 1 Q. B. 742; *Lawrence v. Todd*, 14 C. B. N. S. 554; 32 L. J. M. C. 238.

England and Wales with respect to summary convictions A.D. 1875. and orders,"] inclusive of any Acts amending the same.

The expression "court of summary jurisdiction" means—
 (1.) As respects the city of London, the Lord Mayor or
 any alderman of the said city sitting at the Man-
 sion House or Guildhall justice room; and

Summary
 Jurisdic-
 tion Act,
 1879.

(2.) As respects any police court division in the metro-
 politan police district, any metropolitan police
 magistrate sitting at the police court for that
 division; and

(3.) As respects any city, town, liberty, borough, place,
 or district for which a stipendiary magistrate is
 for the time being acting, such stipendiary magis-
 trate sitting at a police court or other place ap-
 pointed in that behalf; and

(4.) Elsewhere any justice or justices of the peace to
 whom jurisdiction is given by the Summary Juris-
 diction Act: Provided that as respects any case
 within the cognizance of such justice or justices
 as last aforesaid, a complaint under this Act shall
 be heard and determined and an order for im-
 prisonment made by two or more justices of the
 peace in petty sessions sitting at some place
 appointed for holding petty sessions.

Nothing in this section contained shall restrict the
 jurisdiction of the Lord Mayor or any alderman of the city
 of London, or of any metropolitan police or stipendiary
 magistrate in respect of any act or jurisdiction which may
 now be done or exercised by him out of court.

XI. In the case of a child, young person, or woman Set-off in
 subject to the provisions of the Factory Acts [1833 to 1874],* case of
 any forfeiture on the ground of absence or leaving work factory
 shall not be deducted from or set-off against a claim for workers.
 wages or other sum due for work done before such absence
 or leaving work,† except to the amount of the damage (if
 any) which the employer may have sustained by reason of
 such absence or leaving work.

* See now the Factory and Workshops Act, 1878, § 102.

† See *Gregson v. Watson*, 34 L. T. 143.

A.D. 1875.

*Application.*Applica-
tion to
apprentices

XII. This Act in so far as it relates to apprentices shall apply only to an apprentice to the business of a workman as defined by this Act upon whose binding either no premium is paid, or the premium (if any) paid does not exceed twenty-five pounds, and to an apprentice bound under the provisions of the Acts relating to the relief of the poor.

*Saving Clause.*Saving of
special ju-
risdiction.

XIII. Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.*

PART IV.

*Application of Act to Scotland.*Applica-
tion to
Scotland.
Definitions

XIV. This Act shall extend to Scotland, with the modifications following; that is to say,

In this Act with respect to Scotland—

The expression “county court” means the ordinary sheriff court of the county :

The expression “the court of summary jurisdiction” means the small debt court of the sheriff of the county :

The expression “sheriff” includes sheriff substitute :

The expression “instrument of apprenticeship” means indenture :

The expression “plaintiff” or “complainant” means pursuer or complainer :

The expression “defendant” includes defender or respondent :

The expression “the Summary Jurisdiction Act” means the Act of the seventh year of the reign of His Majesty King William the Fourth and the first year of the reign of Her present Majesty, chapter

* By § 11 of the 43 & 44 Vict. c. 16 the limitation as to seamen, etc., was repealed, so that § 13 of the Employers and Workmen Act now applies to seamen and apprentices to the sea service.

forty-one, intituled “An Act for the more effectual A.D. 1875.
recovery of small debts in the Sheriff Courts, and
for regulating the establishment of circuit courts
for the trial of small debt causes by the sheriffs in
Scotland,” and the Acts amending the same.

The expression “surety” means cautioner :

This Act shall be read and construed, as if for the expression “the Lord Chancellor,” wherever it occurs therein, the expression “the Court of Session by act of sederunt” were substituted.

All jurisdictions, powers, and authorities necessary for the purposes of this Act are hereby conferred on sheriffs in their ordinary or small debt courts, as the case may be, who shall have full power to make any order on any summons, petition, complaint, or other proceeding under this Act, that any county court or court of summary jurisdiction is empowered to make on any complaint or other proceeding under this Act.

Any decree or order pronounced or made by a sheriff under this Act shall be enforced in the same manner and under the same conditions in and under which a decree or order pronounced or made by him in his ordinary or small debt court, as the case may be, is enforced.

PART V.

Application of Act to Ireland.

XV. This Act shall extend to Ireland, with the modifications following ; that is to say, Applica-
tion to
Ireland.

The expression “county court” shall be construed to mean civil bill court :

The expression “Lord Chancellor” shall be construed to mean the Lord Chancellor of Ireland :

The expression “the Summary Jurisdiction Act” shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, and elsewhere in Ireland, the Petty Sessions (Ireland) Act, 1851, and any Acts amending the same :

A.D. 1875.

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act :

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions :

The expression "fifth section of the Debtors Act, 1869," shall be construed to mean "sixth section of Debtors Act (Ireland), 1872."

CHAPTER III.

EMPLOYERS AND WORKMEN ACT, 1875.

SUMMARY JURISDICTION ACTS—RULES.

1. These Rules may be cited as the Employers and Workmen Rules, 1886. They came into operation on the first day of January, 1887. Short title
and com-
mencement

2. The proceedings in relation to any dispute between an employer and a workman may be commenced under the Employers and Workmen Act, 1875, in a Court of Summary Jurisdiction for the district in which the defendant or one of the defendants dwelt or carried on business, or was employed at the time the cause of action arose, or in which he or one of them happens to be at the time of the entry of the action, and thereupon the same proceedings shall be had, and the same forms may be used as upon a claim for a civil debt under the Summary Jurisdiction Acts: Provided that the summons shall be served four clear days at least before the hearing in manner directed by the said Summary Jurisdiction Acts, or by leaving it with an adult person at the office or place of business or employment of the defendant or one of the defendants: Provided also that no order of commitment shall be made against an apprentice until he shall have been personally served with a judgment summons. Procedure.

3. A defendant shall not, except by leave of the Court of Summary Jurisdiction, on such terms as the Court may think fit, be permitted to set up against the claims of the plaintiff any set-off or counter-claim, unless he shall have Set-off or
counter-
claim.

served, or cause to be served, by registered post letter or otherwise, two clear days at least before the return-day, a notice thereof directed to the plaintiff at his address as mentioned in the summons, setting forth the particulars of such set-off or counter-claim. Service of any notice by post shall, unless the contrary be proved, be deemed to have been made on the day upon which the letter would have been delivered in the ordinary course of post.

Names of
plaintiffs
claiming
upon
common
circum-
stances to
be inserted
in one
summons.

4. Where disputes between an employer and his workmen are of such a character that the liability of the employer to divers of his workmen depends upon circumstances common to a whole class of their claims, the names of all the workmen whose claims are grounded upon common circumstances may be inserted as plaintiffs in one summons. Where the number of such plaintiffs is large, the name of one plaintiff only may be inserted in the body of the summons, and in such case the names of the other plaintiffs, together with their descriptions and addresses and the amounts of their respective claims, may be indorsed on the summons or added in a schedule thereto annexed.

Defendant
may object
that a
plaintiff's
claim shall
be heard
separately.

5. The employer may, at the hearing of any such summons, object that the claim of any plaintiff included in the summons ought to be separately heard and determined, either on the ground that the amount claimed is disputed, as well as the liability, or as depending on special circumstances. The name of any plaintiff, whose claim is so objected to, shall be struck out by order of the Court of Summary Jurisdiction.

Determina-
tion of
first-named
plaintiff's
claim to
determine
the others.

6. When the summons comes on for bearing, the case of the plaintiff first named in the summons shall (unless the Court otherwise directs) be heard and determined, and the claims of all the other plaintiffs whose names shall have been included in the summons, and not struck out as in Rule 5 provided, shall abide the result of the case so determined.

Where
summons
dismissed.

7. If the Court of Summary Jurisdiction dismisses the summons, no claim shall afterwards be admitted at the instance of any workman whose name was included in the summons (and was not struck out as in Rule 5 provided) in respect of the claim made thereby, unless he shows to

the satisfaction of the Court that his name was included in the summons without his consent.

8. If the Court of Summary Jurisdiction finds in favour of the plaintiff whose case is tried, it shall make an order on all the claims of the plaintiffs included in the summons (not struck out as in Rule 5 provided), and such order shall operate and take effect as if the claim of each workman, whose name may have been so included as a plaintiff in the summons and not struck out, had been separately heard and determined by the Court, and an order had been made on each such claim. Where claimants succeed.

9. The Court of Summary Jurisdiction by whom any New trial. action has been determined *ex parte* may, at the same or any subsequent Court, set aside any judgment so given, and any process thereon, and may grant a new trial on such terms as the Court may think fit.

10. The fees to be paid by a person seeking the assist- Fees. ance of the Court of Summary Jurisdiction shall be those contained in the Schedule annexed hereto.

11. The Court of Summary Jurisdiction may, in its Costs. discretion, allow any party, in respect of any expense he may have incurred in the employment of a solicitor, any sum not exceeding ten shillings where the sum claimed exceeds forty shillings, and not exceeding fifteen shillings where it exceeds five pounds.

12. The forms in force under the Summary Jurisdiction Forms. Rules, 1886, so far as the same are applicable, together with the forms in the Schedule hereto, and forms to the like effect, with such variations as circumstances may require, may be used in proceedings under this Act.

13. The Rules and forms under the Employers and Annulment Workmen Act, 1875, heretofore in use are hereby annulled.

(Signed) HERSCHELL, C.

The 16th July, 1886.

SCHEDULE.

1.

ORDER RESCINDING CONTRACT.

In the [county of . Petty Sessional Division
of .]

Between *A.B.*, Plaintiff,
and
C.D., Defendant.

Before the Court of Summary Jurisdiction sitting at

It is adjudged that the [*or this*] contract [*or instrument of apprenticeship*] made between the plaintiff and defendant [on the day of 18] be rescinded, and that the plaintiff [*or defendant*] do pay to the sum of pounds, being the whole [*or a part*] for wages [*or damages, or in respect of the premium paid on such instrument of apprenticeship*].

Dated the day of one thousand eight hundred and .

J.P.,

Justice of the Peace for the [county] aforesaid.

(Seal.)

2.

ORDER FOR PERFORMANCE OF CONTRACT.

In the [county of . Petty Sessional Division
of .]

Between *A.B.*, Plaintiff,
and
C.D. [and *E.F.*] Defendant.

Before the Court of Summary Jurisdiction at .

It is ordered that the defendant [*C.D.*] do perform his contract [*of apprenticeship*] with the plaintiff, that is to say [*setting out the particulars if necessary*].

[And that he [*or the defendant E.F.*] do pay to the plaintiff the sum of for damages.]

And the defendant, the said *E.F.* [*or C.D.*], being willing to give security for the performance of such contract, the Court hereby accepts his security in pounds, with suret in pounds [each] for the performance of such contract as aforesaid [in place of the payment of [£ part of] such damages].

Dated the day of one thousand eight hundred and .

J.P.,

Justice of the Peace for the [*county*] aforesaid.

Seal.

3.

UNDERTAKING BY DEFENDANT TO PERFORM CONTRACT.

In the [*county of* . *Petty Sessional Division of* .]

Between *A.B.*, Plaintiff,

and

C.D., Defendant.

Whereas it having been found by the Court of Summary Jurisdiction, sitting at on the day of , that the defendant had broken the contract for the breach of which he was summoned, it is ordered that he should give security for the performance of his contract :

Now, therefore, I the defendant, and we [*or I*] his suret , do undertake that the said defendant will perform the said contract, that is to say [*setting out the particulars if necessary*] :

And we do hereby severally acknowledge ourselves bound to forfeit to the plaintiff the sum of pounds and shillings, in case the said defendant fails to perform what he has hereby undertaken to perform.

(Signed where not taken orally) *C.D.*, Defendant.

E.F.,
G.H., } Sureties.

Taken before me this day of .

J.P.,

Justice of the Peace for the [*county*] aforesaid.

Seal.

FEES.

	<i>s.</i>	<i>d.</i>
For entry of every plaint, including summons thereon	1	0
For order in writing on a plaint	2	0
For every undertaking given by way of security	2	0
For judgment-summons, including hearing ...	1	0
For warrant of distress or order of commitment	2	0
For summons to witness	1	0

N.B.—Where the sum claimed exceeds 1*l.* 0*s.* 0*d.*, or the sum in respect of the non-payment of which the summons for or order of commitment or warrant of distress issues exceeds 1*l.* 0*s.* 0*d.*, an additional fee of one shilling on each fee shall be taken.

For mileage in serving or executing process, and for cost of conveying to prison	} Such reasonable cost as may be allowed by the Court.
For affidavit and postage	

CHAPTER IV.

THE CONSPIRACY AND PROTECTION OF PROPERTY ACT.

INTRODUCTION.

§ I.—This Act is described by its title as the Conspiracy and Protection of Property Act, 1875, but conspiracy by the Act is wholly abolished as regards trade disputes, except conspiracies to commit what would be a “crime” if done by one person.

§ II.—The Act came into operation on the first day of September, 1875.

§ III.—CONSPIRACY.—This section must be read in conjunction with § 2 of the Trade Union Act, 1871, which legalises combinations of workmen. The words of that section are:—

“The purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such Trade Union liable to criminal prosecution for conspiracy or otherwise.”

By this section of the Act of 1871 every possible combination of workmen, which would before 1871 have been unlawful merely on the ground of its purposes being in restraint of trade, is expressly legalised, whether it be a temporary or permanent combination.

Decisions as to unlawful means to attain lawful object, under the Trade Union Act, and the Criminal Law Amendment Act.

In the legal decisions given under the above section, or the similar clause in the now repealed Criminal Law Amendment Act, while the object of the trade dispute was lawful, the means adopted by the workmen were declared to be illegal. But § 3 of this statute legalises all acts done in furtherance of the combination or dispute, if the acts so done are not in themselves "crimes" if done by one person. The words are:—

Conspiracy as relating to trade disputes abolished.

"An agreement or combination by two or more persons to do, or procure to be done, any act in contemplation or furtherance of a trade dispute between employers and workmen, shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime."

Conspiracy, therefore, as relating to trade disputes must now be defined as a combination to commit a crime, whether that crime be the object or the means of the combination; for the common law of conspiracy, as affecting trade disputes, has been, by this statute, practically abolished.*

Definition of Crime under the Act.

DEFINITION OF CRIME.—Sub-section 4 of § 3 defines the sense in which "crime" is used in the first clause as follows:—

"A crime for the purposes of this section means an offence punishable on indictment, or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely, or at the discretion

* In the Plymouth case of intimidation, the charge of conspiracy was not preferred against the appellants. See report of case, Appendix B.

of the court as an alternative for some other punishment."

PENALTY.—Sub-section 5 of § 3 contains an ^{Limitation} important limitation of the penalty for an offence ^{of penalty.} under § 4. The words are:—

"Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person."

This limitation of the term of imprisonment to three months is of great importance with regard to offences under §§ 4, 5, and 6 of this Act.

§ IV.—OFFENCES.—Persons employed in the ^{Breach of contract by persons employed in the supply of gas or water.} public supply of gas or water wilfully and maliciously breaking their contract of service, knowing, or having reasonable cause to believe, that the probable consequence of their so doing, either alone or in combination with others, will be to deprive a town or place of gas or water is liable on conviction to pay a penalty not exceeding £20, or to be imprisoned for any term not exceeding three months, with or without hard labour.

A printed copy of this section must be posted ^{Notice of the section to be posted up at the works.} up in a conspicuous place at the gas-works or water-works, subject to a penalty, for not doing so, not exceeding £5 for every day during which such default continues. ^{Penalty for injuring or defacing notice.}

A person injuring or defacing the notice is liable to a penalty not exceeding 40s.

Importance of written contracts for workmen under s. 4.

An unsuccessful effort was made in Parliament to make written contracts compulsory in these instances. It will be well, however, for all workmen who are under contract, as defined by this section, to insist upon written contracts, especially as a breach of contract under this section is a "crime"; and under no pretence should workmen, to whom this section applies, leave their work without giving the required notice. (For nature of contract see chapter on the Employers and Workmen Act under the head of "Jurisdiction of the Act.")

Breach of contract involving injury to persons or property.

§ V. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing, or having reasonable cause to believe, that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall, on conviction thereof, be liable to pay a penalty not exceeding £20, or to be imprisoned for a term not exceeding three months, with or without hard labour.

"Maliciously," definition of, under 24 & 25 Vict. c. 97.

The word maliciously as here used, as well as in § 4, applies "whether the offence shall be committed from malice conceived against the owner of the property in respect of which it shall be committed or otherwise." (Malicious Injury to Property Act, § 58.)

It is possible for this section to be interpreted to mean "a wrongful act, done intentionally, without just cause or excuse."

Application of this

A fear has been expressed that a conviction of

agricultural labourers and others may be obtained under this section from justices of the peace for a simple breach of contract as contemplated by the Employers and Workmen Act, but this would be a straining of the law, for to obtain a conviction it will be necessary to prove something more than a mere breach of contract as provided for in that Act.

section to
agricul-
tural
labourers.

The breach of contract must be wilful and malicious, and the property destroyed or exposed to injury must be "valuable." The latter word, however, is not defined.

In the event of a conviction which in any way appears to overstrain the words of this section, it will be well to obtain such an interpretation of the law as will prevent its working an injustice.

Appeal to
the higher
courts.

The penalties in either case may be by fine or imprisonment; the maximum of the first is £20, of the latter three months.

Penalties.

§ VI.—When a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is, or is likely to be, seriously or permanently injured, he shall be liable either to pay a penalty not exceeding £20, or to be imprisoned for a term not exceeding six months, with or without hard labour.

Penalty
for neglect
of a master
to provide
food,
clothing,
etc., for
servants or
appren-
tices.

The penalty in this case is higher than in either of the preceding sections.

By § 11 it is provided that "the respective parties to the contract of service, their husbands or wives, shall be deemed and considered

Regulation
as to evi-
dence
under ss.
4, 5, & 6.

as competent witnesses in prosecutions under §§ 4, 5, and 6.”

This is very important, for in most other cases of a criminal prosecution the mouth of the prisoner is closed. Under this statute he can be examined on oath, as under the Employers and Workmen Act. This right, however, does not apply to prosecutions for intimidation, watching and besetting, etc., under § 7.

Penalty for intimidation or annoyance by violence or otherwise.

See Appendix, Plymouth case.

§ VII.—“Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully, and without legal authority,—

- “1. Uses violence to or intimidates such other person, or his wife, or children, or injures his property;* or,
- “2. Persistently follows such other person about from place to place; or,
- “3. Hides any tools, clothes, or other property owned or used by such other person, or deprives him of, or hinders him in, the use thereof; or,
- “4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or,
- “5. Follows such other person with two or more persons in a disorderly manner in or through any street or road,

* The Plymouth case was prosecuted under this subsection. The full fine of £20 was imposed, with the alternative of six weeks' imprisonment. (See the report of Plymouth case, statement prepared by the solicitors, Appendix A.)

“shall, on conviction thereof by a Court of Summary Jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding £20, or to be imprisoned for a term not exceeding three months, with or without hard labour.”

“Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.”

Saving clause as to peaceful picketing.

This section is substituted for the repealed Criminal Law Amendment Act, 1871.

The section substituted for the Criminal Law Amendment Act, 1871.

The most important alteration made by this section consists in its general application. In every decision by the courts this should be considered, for it is applicable to all persons of whatever position.

The law general in its application.

Another considerable modification of the repealed statute is the power of the court to impose a fine in lieu of imprisonment, instead of imprisonment only.

Fine in lieu of imprisonment.

A third is giving the accused the right to object to be tried by summary jurisdiction, and to elect to be tried by jury. (§ 9.)

Right of trial by jury.

The alteration in the wording of the section is not great, the word “compel” is substituted for “coerce” in the first clause, and “molest” is expunged.

Peaceful picketing is no longer prohibited, for, although the Government refused expressly to legalise “peaceful persuasion,” yet it was distinctly declared that it was legal under the Act.

Peaceful picketing not prohibited.

Sec Ap-
pendix A,
Peaceful
Picketing.

Moreover, the proviso at the end of the section apparently gives all the necessary protection to peaceful picketing, unless justices overstrain the law, which is not now so likely to be done, seeing that the law is general.*

The Re-
corder's
charge
in the
Cabinet-
makers'
case.

An assurance was given by the then Home Secretary that this section is an embodiment of the Recorder's (Mr. Russell Gurney) charge, in the case of the Cabinet-makers, and the fact of the Home Secretary sending a copy of that charge with the Acts to every Magistrate and Judge, has, no doubt, prevented any flagrant oppression by the law. Meanwhile, all true friends to labour cannot but hope that workmen will generously accept the law, and keep within its lines.†

§§ 3, 4, 5,
& 7 not
confined to
any class
of work-
men.

The four classes of offences given in §§ 3, 4, 5, and 7 are not confined to any particular class of workmen, for there is no such restriction to workmen of particular classes as specified in the Employers and Workmen Act. The Act does not, however, apply to seamen, or to apprentices to the sea service.

Reduction
of penal-

§ VIII.—Power is given by this section to any court or justices having jurisdiction to reduce the

* There have been instances in which complaints of overstraining the law have been made. But the more usual way now is to interfere with the pickets under local Police Acts, for obstruction and the like, the men being ordered to "move on."

† Should any unjust decision occur in the administration of this Act it will be well for the officers of societies to send full particulars to the Secretary of the Trades Union Congress Parliamentary Committee. There has been some remissness in this respect on the part of those whose duty it is to keep the Parliamentary Committee well informed as to legal proceedings under this and other Acts.

penalties under any other Act, relating to employers and workmen, to not less than one-fourth the sum.

ties under other Acts.

§§ IX. to XI.—THE TRIBUNAL, AND MODE OF DECIDING CASES.—All offences under the Act may be dealt with on summary conviction, subject to the right of the defendants where the offence is punishable by a penalty of £20, or imprisonment, to be tried by a jury. Conspiracy can only be tried by the Superior Criminal Courts, or, in certain cases, by Quarter Sessions.

Power of offender under this Act to elect to be tried on indictment and not by a Court of Summary Jurisdiction.

The penalties in each case are given under each separate section.

The Court of Summary Jurisdiction for the purposes of this Act is constituted precisely as the Court of Summary Jurisdiction under the Employers and Workmen Act. (See Tribunals in the chapter on the Employers and Workmen Act.)

Constitution of Courts of Summary Jurisdiction.

The procedure is by information laid before a magistrate, and a summons issued thereon. On refusal or neglect to appear on summons, a warrant may issue.

Procedure before a Court of Summary Jurisdiction.

WITNESSES.—Parties to the contract of service, and their husbands and wives, are competent witnesses, either on summary conviction or indictment, except in proceedings under § 7.

Regulation as to witnesses.

OBJECTION BY DEFENDANT TO THE COURT.—The accused may, on appearing before the Court, object to being tried by summary jurisdiction; the offence may thereupon be prosecuted on indictment. In such cases the Court should inform the defendant that the law has given him that option.

Defendant may object to be tried by a Court of Summary Jurisdiction.

As the costs of the indictment are not allowed, the prosecutor should be asked if he desires to prosecute.

Costs of prosecution to be paid by prosecutor.

Appeal to
Quarter
Sessions.

§ XII.—This section gives the right of appeal to Quarter Sessions against a conviction in England and Ireland (Scotland is provided for in another Act), with power to the Court of Appeal to confirm, reverse, or modify the decision of the Court of Summary Jurisdiction, or to remit the matter again to that Court to be reheard.*

Appeal to
a Superior
Court.

CASE FOR OPINION OF A SUPERIOR COURT.—A case may also be applied for and stated on any point of law arising on any information under the Act, for the opinion of a Superior Court; but not if the defendant elects to be tried by a jury.† It is important to bear in mind that in all cases of appeal the appellant must enter into recognizances, with or without sureties as the Court may direct, to prosecute the appeal and pay such costs of the respondent as the Court may order.

Definitions
and saving
clause.

§§ XIII. to XVI.—These sections contain definitions, and the saving clause.

Repeal
clauses of
the Act.

§ XVII.—This section contains the repeal clauses of the Act, and certainly is not the least important part of the statute, for by it all that is good in the Act is extended.

Applica-
tion of the
Act to
Scotland
and
Ireland.

§§ XVIII. to XXI.—The remaining sections extend the application of the Act to Scotland and Ireland, and give the necessary directions, modifications, and definitions.

* The Plymouth case was appealed against at the Plymouth Quarter Sessions, and was tried by the Recorder. (See Plymouth case, Chap. XVII.)

† A case was stated for a Superior Court in the Plymouth case by the Recorder. (See report of that case, Appendix B ; and Chap. XVII., Appeals, etc.)

CHAPTER V.

CONSPIRACY AND PROTECTION OF PROPERTY.

[38 & 39 VICT., CH. 86.]

AN Act for amending the Law relating to Conspiracy, and A.D. 1875.
to the Protection of Property, and for other purposes. —

[13th August, 1875.]

Be it enacted as follows :

I. This Act may be cited as the Conspiracy and Pro- Short title.
tection of Property Act, 1875.

II. This Act shall come into operation on the first day Commence-
of September one thousand eight hundred and seventy- ment of
five. Act.

Conspiracy and Protection of Property.

III. An agreement or combination by two or more Amend-
persons to do or procure to be done any act in contempla- ment of law
tion or furtherance of a trade dispute between employers as to con-
and workmen shall not be indictable as a conspiracy in spiracy in
such act committed by one person would not be punishable trade dis-
as a crime. putes.

Nothing in this section shall exempt from punishment
any persons guilty of a conspiracy for which a punishment
is awarded by any Act of Parliament.

Nothing in this section shall affect the law relating to
riot, unlawful assembly, breach of the peace, or sedition, or
any offence against the State or the Sovereign.

A.D. 1875. — A crime for the purposes of this section means an offence punishable on indictment or an offence which is punishable on summary conviction, and for the commission of which the offender is liable under the statute making the offence punishable to be imprisoned either absolutely or at the discretion of the court as an alternative for some other punishment.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any, as may have been prescribed by the statute for the punishment of the said act when committed by one person.

Breach of contract by persons employed in supply of gas or water.

IV. Where a person employed by a municipal authority or by any company or contractor upon whom is imposed by Act of Parliament the duty, or who have otherwise assumed the duty of supplying any city, borough, town, or place, or any part thereof, with gas or water, wilfully and maliciously breaks a contract of service with that authority or company or contractor, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to deprive the inhabitants of the city, borough, town, or place, or part, wholly or to a great extent of their supply of gas or water, he shall on conviction thereof by a court of summary jurisdiction or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

Every such municipal authority, company, or contractor as is mentioned in this section shall cause to be posted up, at the gasworks or waterworks, as the case may be, belonging to such authority or company or contractor, a printed copy of this section in some conspicuous place where the same may be conveniently read by the persons employed, and as often as such copy becomes defaced, obliterated, or destroyed, shall cause it to be renewed with all reasonable despatch.

If any municipal authority or company or contractor

make default in complying with the provisions of this A.D. 1875. section in relation to such notice as aforesaid, they or he shall incur on summary conviction a penalty not exceeding five pounds for every day during which such default continues, and every person who unlawfully injures, defaces, or covers up any notice so posted up as aforesaid in pursuance of this Act, shall be liable on summary conviction to a penalty not exceeding forty shillings.

V. Where any person wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequences of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury, he shall on conviction thereof by a court of summary jurisdiction, or indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Breach of contract involving injury to persons or property.

Miscellaneous.

VI. Where a master, being legally liable to provide for his servant or apprentice necessary food, clothing, medical aid, or lodging, wilfully and without lawful excuse refuses or neglects to provide the same, whereby the health of the servant or apprentice is or is likely to be seriously or permanently injured, he shall on summary conviction be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding six months, with or without hard labour.

Penalty for neglect by master to provide food, clothing, etc., for servant or apprentice.

VII. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority,—

Penalty for intimidation or annoyance by violence or otherwise.

1. Uses violence to or intimidates such other person or his wife or children, or injures his property ; or,
2. Persistently follows such other person about from place to place ; or,
3. Hides any tools, clothes, or other property owned or

A.D. 1875.

used by such other person, or deprives him of or hinders him in the use thereof ; or,

4. Watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such a house or place ; or,

5. Follows such other person with two or more other persons in a disorderly manner in or through any street or road,

shall, on conviction thereof by a court of summary jurisdiction, or on indictment as hereinafter mentioned, be liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach to such house or place, in order merely to obtain or communicate information, shall not be deemed a watching or besetting within the meaning of this section.

Reduction
of penalties

VIII. Where in any Act relating to employers or workmen a pecuniary penalty is imposed in respect of any offence under such Act, and no power is given to reduce such penalty, the justices or court having jurisdiction in respect of such offence may, if they think it just so to do, impose by way of penalty in respect of such offence any sum not less than one-fourth of the penalty imposed by such Act.

Legal Proceedings.

Power for
offender
under this
Act to be
tried on
indictment
and not by
court of
summary
jurisdiction.

IX. Where a person is accused before a court of summary jurisdiction of any offence made punishable by this Act, and for which a penalty amounting to twenty pounds, or imprisonment, is imposed, the accused may, on appearing before the court of summary jurisdiction, declare that he objects to being tried for such offence by a court of summary jurisdiction, and thereupon the court of summary jurisdiction may deal with the case in all respects as if the accused were charged with an indictable offence and not an offence punishable on summary conviction, and the offence may be prosecuted on indictment accordingly.

X. Every offence under this Act which is made punishable on conviction by a court of summary jurisdiction or on summary conviction, and every penalty under this Act recoverable on summary conviction, may be prosecuted and recovered in manner provided by the Summary Jurisdiction Act. A.D. 1875.
Proceedings before court of summary jurisdiction.

XI. Provided, that upon the hearing and determining of any indictment or information under sections four, five, and six of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses. Regulations as to evidence.

XII. In England or Ireland, if any party feels aggrieved by any conviction made by a court of summary jurisdiction on determining any information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

- (1.) The appeal shall be made to some court of general or quarter sessions.*

Definitions.

XIII. In this Act,—
The expression “the Summary Jurisdiction Act”† means [the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled “An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders,”] inclusive of any Acts amending the same; and

The expression “court of summary jurisdiction” means— General definitions: “The Summary Jurisdiction Act, 1879.”
“Court of summary jurisdiction.”

- (1.) As respects the city of London, the Lord Mayor or any alderman of the said city sitting at the Mansion House or Guildhall justice room ; and
(2.) As respects any police court division in the Metropolitan police district, any Metropolitan police magistrate sitting at the police court for that division ; and

* The remainder of this section is repealed by 47 & 48 Vict. c. 43,
§ 4. See Chapter XVII., Appeals, New Trial, etc.
† Now the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

A.D. 1875.

- (3.) As respects any city, town, liberty, borough, place, or district for which a stipendiary magistrate is for the time being acting, such stipendiary magistrate sitting at a police court or other place appointed in that behalf ; and
- (4.) Elsewhere, any justice or justices of the peace to whom jurisdiction is given by the Summary Jurisdiction Act : Provided that, as respects any case within the cognizance of such justice or justices as last aforesaid, an information under this Act shall be heard and determined by two or more justices of the peace in petty sessions sitting at some place appointed for holding petty sessions.

Nothing in this section contained shall restrict the jurisdiction of the Lord Mayor or any alderman of the city of London, or any Metropolitan police or stipendiary magistrate, in respect of an act or jurisdiction which may now be done or exercised by him out of court.

Definitions
of "municipal
authority"
and "public
company."

XIV. The expression "municipal authority" in this Act means any of the following authorities, that is to say, the Metropolitan Board of Works (now the London County Council), the Common Council of the city of London, the Commissioners of Sewers of the city of London, the town council of any borough for the time being subject to the Act of the session of the fifth and sixth years of the reign of King William the Fourth, chapter seventy-six, intituled "An Act to provide for the Regulation of Municipal Corporations in England and Wales," and any Act amending the same, any commissioners, trustees, or other persons invested by any local Act of Parliament with powers of improving, cleansing, lighting, or paving any town, and any local board.

Any municipal authority or company or contractor who has obtained authority by or in pursuance of any general or local Act of Parliament to supply the streets of any city, borough, town, or place, or of any part thereof, with gas, or which is required by or in pursuance of any general or local Act of Parliament to supply water on demand to the inhabitants of any city, borough, town, or place, or any

part thereof, shall for the purposes of this Act be deemed A.D. 1875.
to be a municipal authority or company or contractor upon —
whom is imposed by Act of Parliament the duty of supply-
ing such city, borough, town, or place, or part thereof, with
gas or water.

XV. The word “maliciously” used in reference to any “Malici-
offence under this Act shall be construed in the same ously” in
manner as it is required by the fifty-eighth section of the this Act
Act relating to malicious injuries to property, that is to say, construed
the Act of the session of the twenty-fourth and twenty-fifth as in Mali-
years of the reign of Her present Majesty, chapter ninety- cious Inju-
seven, to be construed in reference to any offence committed ries to Pro-
under such last-mentioned Act. perty Act.

Saving Clause.

XVI. Nothing in this Act shall apply to seamen or to Savingas to
apprentices to the sea service. sea service.

Repeal.

XVII. On and after the commencement of this Act, Repeal of
there shall be repealed:— Acts.

1. The Act of the session of the thirty-fourth and thirty-
fifth years of the reign of Her present Majesty,
chapter thirty-two, intituled “An Act to amend the
Criminal Law relating to violence, threats, and mo-
lestation ;” and

2. “The Master and Servant Act, 1867,” and the enact-
ments specified in the First Schedule to that Act,
with the exceptions following as to the enactments in
such Schedule ; (that is to say,)

(1.) Except so much of sections one and two of the
Act passed in the thirty-third year of the reign of
King George the Third, chapter fifty-five, intituled
“An Act to authorise justices of the peace to
impose fines upon constables, overseers, and other
peace or parish officers for neglect of duty, and
on masters of apprentices for ill-usage of such
their apprentice ; and also to make provision for
the execution of warrants of distress granted by
magistrates,” as relates to constables, overseers,
and other peace or parish officers ; and

A.D. 1875.

- (2.) Except so much of sections five and six of an Act passed in the fifty-ninth year of the reign of King George the Third, chapter ninety-two, intituled "An Act to enable justices of the peace in Ireland to act as such, in certain cases out of the limits of the counties in which they actually are ; to make provision for the execution of warrants of distress granted by them ; and to authorise them to impose fines upon constables and other officers for neglect of duty, and on masters for ill-usage of their apprentices," as relates to constables and other peace or parish officers ; and
- (3.) Except the Act of the session of the fifth and sixth years of the reign of Her present Majesty, chapter seven, intituled "An Act to explain the Acts for the better regulation of certain apprentices ;" and
- (4.) Except sub-sections one, two, three, and five of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," relating to certain disputes between employers and the persons employed by them ; and
3. Also there shall be repealed the following enactments making breaches of contract criminal, and relating to the recovery of wages by summary procedure ; (that is to say,)
- (a.) An Act passed in the fifth year of the reign of Queen Elizabeth, chapter four, and intituled "An Act touching dyvers orders for artificers, labourers, servantes of husbandrye, and apprentices ;" and
- (b.) So much of section two of an Act passed in the twelfth year of King George the First, chapter thirty-four, and intituled "An Act to prevent unlawful combination of workmen employed in the woollen manufactures, and for better payment of their wages," as relates to departing from service and quitting or returning work before it is finished ; and
- (c.) Section twenty of an Act passed in the fifth year

of King George the Third, chapter fifty-one, the A.D. 1875. title of which begins with the words "An Act —
for repealing several laws relating to the manu-
facture of woollen cloth in the county of York,"
and ends with the words "for preserving the
credit of the said manufacture at the foreign
market;" and

(d.) An Act passed in the nineteenth year of King George the Third, chapter forty-nine, and intituled "An Act to prevent abuses in the payment of wages to persons employed in the bone and thread lace manufactory;" and

(e.) Sections eighteen and twenty-three of an Act passed in the session of the third and fourth years of Her present Majesty, chapter ninety-one, intituled "An Act for the more effectual prevention of frauds and abuses committed by weavers, sewers, and other persons employed in the linen, hempen, union, cotton, silk, and woollen manufactures in Ireland, and for the better payment of their wages, for one year, and from thence to the end of the next session of Parliament;" and

(f.) Section seventeen of an Act passed in the session of the sixth and seventh years of Her present Majesty, chapter forty, the title of which begins with the words "An Act to amend the Laws," and ends with the words "workmen engaged therein;" and

(g.) Section seven of an Act passed in the session of the eighth and ninth years of Her present Majesty, chapter one hundred and twenty-eight, and intituled "An Act to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases."

Provided that,—

(1.) Any order for wages or further sum of compensation in addition to wages made in pursuance of section sixteen of "The Summary Jurisdiction (Ireland) Act, 1851," may be enforced in like manner as if it

A.D. 1875.

were an order made by a court of summary jurisdiction in pursuance of the Employers and Workmen Act, 1875, and not otherwise ; and

- (2.) The repeal enacted by this section shall not affect—
- (a.) Anything duly done or suffered, or any right or liability acquired or incurred under any enactment hereby repealed ; or
 - (b.) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed ; or
 - (c.) Any investigation, legal proceeding, or remedy in respect of any such right, liability, penalty, forfeiture, or punishment as aforesaid ; and any such investigation, legal proceeding, and remedy may be carried on as if this Act had not passed.

Application of Act to Scotland.

Applica-
tion to
Scotland.
Definitions.

XVIII. This Act shall extend to Scotland, with the modifications following ; that is to say,

- (1.) The expression “ municipal authority ” means the town council of any royal or parliamentary burgh, or the commissioners of police of any burgh, town or populous place under the provisions of the General Police and Improvement (Scotland) Act, 1862, or any local authority under the provisions of the Public Health (Scotland) Act, 1862 :
- (2.) The expression “ The Summary Jurisdiction Act ” means the Summary Procedure Act, 1864, and any Acts amending the same :
- (3.) The expression “ the court of summary jurisdiction ” means the sheriff of the county or any one of his substitutes.

Recovery of
penalties,
etc., in
Scotland.

XIX. In Scotland the following provisions shall have effect in regard to the prosecution of offences, recovery of penalties, and making of orders under this Act :

- (1.) Every offence under this Act shall be prosecuted, every penalty recovered, and every order made at the instance of the Lord Advocate, or of the Procurator Fiscal of the sheriff court :

(2.) The proceedings may be on indictment in the Court A.D. 1875. of Justiciary in Edinburgh or on circuit or in a sheriff court, or may be taken summarily in the sheriff court under the provisions of the Summary Procedure Act, 1864: —

(3.) Every person found liable on conviction to pay any penalty under this Act shall be liable, in default of payment within a time to be fixed in the conviction, to be imprisoned for a term, to be also fixed therein, not exceeding two months, or until such penalty shall be sooner paid, and the conviction and warrant may be in the form of No. 3 of Schedule K of the Summary Procedure Act, 1864:

(4.) In Scotland all penalties imposed in pursuance of this Act shall be paid to the clerk of the court imposing them, and shall by him be accounted for and paid to the Queen's and Lord Treasurer's Remembrancer, and be carried to the Consolidated Fund.

XX. In Scotland it shall be competent to any person to appeal in Scotland as prescribed by 20 Geo. II. c. 43. appeal against any order or conviction under this Act to the next circuit Court of Justiciary, or where there are no circuit courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitation, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to circuit courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

Application of Act to Ireland.

XXI. This Act shall extend to Ireland, with the modifications following; that is to say, Application to Ireland.

The expression "The Summary Jurisdiction Act" shall be construed to mean, as regards the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district; and elsewhere in Ireland, the Petty Sessions

A.D. 1875. (Ireland) Act, 1851, and any Acts amending the
— same :

The expression "court of summary jurisdiction" shall be construed to mean any justice or justices of the peace, or other magistrate to whom jurisdiction is given by the Summary Jurisdiction Act :

The court of summary jurisdiction, when hearing and determining complaints under this Act, shall in the police district of Dublin metropolis be constituted of one or more of the divisional justices of the said district, and elsewhere in Ireland of two or more justices of the peace in petty sessions sitting at a place appointed for holding petty sessions :

The expression "municipal authority" shall be construed to mean the town council of any borough for the time being, subject to the Act of the session of the third and fourth years of the reign of Her present Majesty, chapter one hundred and eight, intituled "An Act for the Regulation of Municipal Corporations in Ireland," and any commissioners invested by any general or local Act of Parliament, with power of improving, cleansing, lighting, or paving any town or township.

CHAPTER VI.

THE TRADE UNION ACTS, 1871 AND 1876.

[34 & 35 VICT., CH. 31] AND [39 & 40 VICT., CH. 22.]

INTRODUCTION.

§ I.—These Acts may be cited as “The Trade Union Acts, 1871 and 1876,” or separately as the “Trade Union Act, 1871,” and the “Trade Union Act Amendment Act, 1876.” The Act of 1871 is, by the first section of the amending Act, 1876, termed “the principal Act,” and it is provided that both Acts “shall be construed together as one Act.”

Construction and short title. See Trade Union Act Amendment Act, 1876, s. 1.

DEFINITION OF A TRADE UNION.

In their essence trade unions are voluntary associations of workmen for mutual assistance in securing generally the most favourable conditions of labour; but the Act of 1871 took a much more restricted view. This was enlarged by the definition of a trade union in the amending Act, 1876.

Definition as to trade union.

The bodies to which the “Trade Union Acts, 1871 and 1876” apply are defined in § 16 of the amending Act as follows:—

Definition of a trade union by s. 16 of the Trade Union Act Amendment-

The term “trade union” means any combination, whether temporary or permanent,

ment Act,
1876, s. 16.

for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade. Provided that these Acts shall not affect certain agreements which may be shortly described as contracts of partnership, contracts of service, and contracts of sale or of apprenticeship.

See Trade
Union Act,
1871, s. 23.

By the Act of 1871 it was essential, for a society to be registered under the Trade Union Act, that it would have been illegal but for the Act. This is no longer necessary, for by

See Trade
Union Act,
1876, s. 16.

the definition in § 16 of the Trade Union Act Amendment Act, 1876, a society can be registered as a trade union "*whether such combination would or would not*, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade."

Non-mili-
tant trade
unions.

This extends the provisions of the Trade Union Act, 1871, to such unions as are on the borderland of a trade union and of a friendly society respectively, and includes those unions which may not have any purposes in their rules that are in restraint of trade, provided the rules

fulfil one or other of the conditions set forth in § 16 of the Act of 1876.

The definition of a trade union in the Act of 1876, § 16, includes three classes of bodies, namely: (1) Workmen's Trade Unions; (2) Employers' Trade Unions; and (3) Unions of Trade Unions. Class I. was undoubtedly the one for whose benefit the Acts of 1871 and 1876 were passed. They are trade unions in the sense intended by these Acts, and they constitute the major portion of registered trade unions. Class II. is small in number, but some employers' associations are registered. There is, however, no reason why they should not take advantage of the Acts in precisely the same way as workmen's trade unions. But those registered seem to be for the purpose of "imposing restrictive conditions on the conduct of any trade or business."* Class III. comprises a variety of bodies, including Trades Councils, and the Labour Councils and Labour Federations of recent times. Some of these are registered, but the majority are not. Perhaps one reason for this is to be found in the doubt that exists as to whether or not they are within the meaning of the definition of a trade union provided by the Acts.

Though bodies having purposes *not* in restraint of trade can be registered under the Trade Union Acts, yet it is an essential part of the definition of a trade union under § 16 of the Act of 1876 that it should be either for regulating trade relations, or for imposing restrictive conditions on the conduct of trade. Hence, societies for providing relief to members when out of employment, in-

* See Registrar's Report for 1892, pages 39 and 40. .

cluding societies of builders and painters for relief during the slack season of trade, which have no provision in their rules for the regulation of trade, cannot be registered as trade unions. They are registered as "specially authorised societies," under the Friendly Societies Acts, by virtue of an authority granted on March 20th, 1877.*

REPEAL OF DISABILITIES CONSEQUENT ON THE DOCTRINE OF RESTRAINT OF TRADE.

The above definition must be read in connection with §§ 2 and 3, which declare that—

Trade
union not
criminal.

§ II.—The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.†

Trade
union not
unlawful.

§ III.—The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.

Con-
spiracy
and Pro-
tection of
Property
Act, s. 3.

§ 2 of this Act must now be read in connection with § 3 of the Conspiracy and Protection of Property Act, which legalises all acts done in furtherance of a combination or dispute, if the acts so done are not in themselves "crimes" if done by one person; see Chapter II., § 3.

* See Appendix D, Specially Authorised Societies.

† The Conspiracy and Protection of Property Act, 1875, made no change in this respect. See that Act and the notes thereon. Chap. IV.

By § 3 combinations of workmen are no longer unlawful for being in restraint of trade, and the plea of restraint of trade will not render void or voidable any agreement or trust, or enable an offender to avoid the penalties of the law for breach of agreement, or for debt, on the ground of its being illegal as being in restraint of trade.

Doctrine
of restraint
of trade.

ENFORCING OR RECOVERY OF DAMAGES.

§ IV.—Members of trade unions are, either actually, or through their trustees in the case of a registered union, the joint owners of the property of such unions so long as they continue members. But being voluntary associations, when a member leaves his society, or refuses to be bound by its rules, he forfeits all claim to the property and funds, if its rules so provide. He cannot, by the express provisions of § 4 of the Act, be sued for contributions due, nor enforce payments due to him, for the Act provides that nothing contained in it shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any agreement for the application of the funds to provide benefits to members.

Trade
Union con-
tracts,
when not
enforce-
able.

This section thus prevents any interference on the part of courts of law with the internal organisation or working of trade unions. If it were not for this section these unions might be constantly harassed by lawsuits, by suing and being sued for contributions or arrears or other payments supposed

Internal
disputes,
suing and
being sued.

* It is as joint owners, or co-partners, that prosecutions can be instituted under Russell Gurney's Act, commonly called the Recorder's Act. See Chap. XI.

to be due. The wisest plan in all cases is to provide in the rules for the appointment of arbitrators, and the reference of all disputes to arbitration, so that all claims may be adjusted on the one side and on the other without resorting to courts of law and costly litigation.*

Disputes
between
one society
and
another.

But, although agreements, fines, contributions, and other payments are not enforceable at law, none of the agreements mentioned in any of the sub-sections of § 4 are rendered unlawful.

Arbitra-
tion better
than
courts of
law.

It is fortunate for trade unions generally that they keep their contracts both with regard to their own members, to non-members, and to each other, as unions. It is useless to speculate upon the possibility of such contracts being broken, and of litigation arising therefrom, because, in case of disputes arising, these unions have tribunals to

* It has been suggested by persons of the highest authority in matters pertaining to the legal position of trade unions, that some such provision as § 22 of the Friendly Societies Act, 1875, requiring every society to provide by its rules how disputes shall be settled, and enabling the County Courts to enforce the decision of the arbitrators appointed under the rules, should be enacted for and applied to trade unions. At present, a member aggrieved by the action of his union is wholly without remedy under the Acts, and even when he has the right to submit his case to arbitration, he is powerless to enforce a decision in his favour. It speaks volumes for the equity with which trade unions are administered that there should be so little ground of complaint with such a state of things, by the absence of any such provision in the Act, or generally in the rules of the unions. It is quite worth considering whether some provision of the kind should not be made, in the event of disputes, not only as between members and the society, but as between society and society, especially as such disputes have become more fre-

which to refer such disputes other than courts of law, whose decisions are uniformly accepted by both parties.*

FRIENDLY SOCIETIES AND OTHER ACTS NOT TO APPLY.

§ V.—This section declares that the Friendly Societies Acts, the Industrial and Provident Societies Acts, and the Companies Acts, shall not apply to any trade union. Some of these Acts are manifestly inapplicable to such unions; in other cases some of their provisions are enacted in the Trade Union Acts. Trade unions, by § 7 of the Trade Union Act Amendment Act, 1876, are now exempted from the provisions of the Life Assurance Companies Acts, and thus the difficulties and penalties with regard to the issue of policies and other matters are obviated.

This section further declares that “the registration of any trade union under any of the said Acts shall be void.” It is important that this should be borne in mind because by this section the registration of any society under the Friendly Societies Act does not appear to have been otherwise than satisfactory, for there are no complaints of frivolous or vexatious proceedings under it. Moreover, a member of a trade union would feel that his interests were protected if he had his remedy provided for in the rules in case of a dispute. The extension of provident benefits in most of the unions seems to render such a provision desirable.

* Instances frequently occur of trade unions lending sums of money to each other in cases of difficulty, and also of unions advancing sums to the members, sometimes of members lending to the unions; but the amounts are repaid or otherwise settled without recourse to law.

The Friendly Society Acts, the Industrial Societies Acts, and the Companies Acts not to apply to trade unions. Exemption from the provisions of the Life Assurance Companies Acts. Trade unions cannot be registered under the Friendly Societies Acts.

Societies Acts is void in law if the society has any of the purposes of a trade union within the meaning of this Act; and not only so, but the trustees are liable to prosecution if they apply any portion of their funds to any purposes other than the objects contemplated by the Friendly Societies Acts.

Deposit of rules no longer legal, and those deposited are cancelled. The deposit of the rules of trade unions, under the Friendly Societies Acts, is no longer legal, and those which were deposited before the passing of the Trade Union Act, 1871, have ceased to have any effect.

Trade unions not entitled to privileges of friendly societies. It must also be clearly understood that registered trade unions are not entitled to any of the privileges of friendly societies other than those distinctly provided for in the Trade Union Acts, 1871 and 1876. Members of trade unions have now the right (under § 10 of the Trade Union Act Amendment Act, 1876, and the Provident Nominations Act, 1883) to nominate persons to whom money payable on death may be made. Any such nomination must be made in accordance with these enactments, and it will be well for provision to be made in the rules of all registered trade unions for such nominations.

Trade unions to be within s. 28 of the Friendly Societies Act, 1875. § 2 of the Trade Union Act Amendment Act, 1876, says: "Notwithstanding anything in § 5 of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of § 28 of the Friendly Societies Act, 1875." The attention of members of trade unions is particularly directed to this section because it applies, whether the

Importance of this section.

union be registered or unregistered, to every trade union in the country which insures or pays money on the death of a child under ten years of age. The most important of these provisions are:—(1.) The limitation of payments on the death of a child under five years to six pounds, inclusive of payments by any other society; and of ten pounds for those under ten years of age. (2.) The parent of the child, or the personal representative of the parent, may alone receive payments on the death of any child under ten years of age. (3.) The particulars of the amount claimed, and the name of the society, are to be stated to the registrar of deaths on application for a certificate, the sum to be charged for such certificate is not to exceed one shilling.* (4.) Registrars of deaths are not to give certificates unless the cause of death has been previously entered in the register of deaths, on the certificate of a coroner or of the registered medical practitioner who attended such deceased child during its last illness. (For the full text of § 28 of the Friendly Societies Act see Appendix C.)

Principal provisions of the section stated.

Appendix C.

SEPARATION OF TRADE AND PROVIDENT FUNDS.

It has been argued that the funds of trade unions should be separated into two distinct portions, so that in the one case the Friendly Societies Acts may apply, and in the other the Trade Union Acts. Apart from the difficulty of keeping two separate sets of books, and the inconvenience of

Separation of trade union funds.

* Complaints are often made of charges above one shilling as provided in the Act, but it seems clear that no registrar can claim more than the Act allows.

Objections
thereto
stated, and
reasons
given.

having two sets of officers, which in many instances would have to be the case, there are other and stronger objections to this division of funds and benefits. The primary object of a trade union is the protection of the trade privileges or interests of the members; the other benefits are secondary, or incidental; whereas, in the case of friendly societies, the latter is the only object, the first being completely ignored, and, in reality, contrary to law. This fact is not at all at variance with the oft-repeated statement that in most of the large trade unions the greatest portion of their expenditure is incurred for the sick and other benefits paid to their members. This is perfectly true, as their annual reports show, but it is also true that the payment of these benefits is not the primary object of these unions.*

REGISTERED TRADE UNIONS.

Registry
of trade
unions.
See Regi-
stration
form.

§ VI. provides for the registration of trade unions. Any seven or more members may register a trade union under the Act by complying with its provisions with regard to registry, and by signing their names to the rules, "provided that if any one of the purposes of such trade union be unlawful such registration shall be void."†

Unlawful
purposes.

It is difficult to imagine that any purpose of

* The Trade Union (Provident Funds) Act, 1893, does not require any such separation. It simply requires a statement, supported by evidence, as to the proportion of the taxable income from investments which is applied to provident benefits. See Act, Chap. X.

† See the Rules and Regulations, and also the forms to be used under the Acts—those now in use are only given. See Chap. IX.

a trade union, if properly constituted, can be unlawful under existing statutes, so long as the legitimate objects of a trade union are adhered to.* The guiding principle to be laid down is simply to state the real and *bonâ fide* objects of such union in the rules to be submitted to the registrar, and never under any circumstances to keep any purposes out of the rules by compiling bye-laws which go beyond the rules. Bye-laws are often necessary for local and administrative purposes, but these should only deal with details as to management, local peculiarities as to trade customs and privileges, and similar questions. Attention to this point will prevent difficulties arising after registration is effected.

* Apparently, the term "unlawful" purpose which voids the registry of a trade union need not necessarily be a criminal or pernicious purpose. For example, if a trade union proposed to set up in trade for itself, as sometimes has been done, that would be an "unlawful" purpose, for a body consisting of more than twenty persons cannot carry on a trade for profit without being registered as a company under the Companies Acts, or under the Industrial and Provident Societies Act, or otherwise; and such a purpose would therefore "void" its registry as a trade union. It is, indeed, extremely doubtful whether some trade unions are not sailing close to the wind by providing in their rules for Labour Representation in the House of Commons, and perhaps on Local Bodies. If the Member of Parliament or other representative does not act according to the instructions given to him, and the trade union proposes therefore to stop his salary, the legality of such a course would be questionable. To inflict a money loss on a man on account of a vote given in discharge of his public duty to his constituents, would be a dangerous thing to do, even if the fine or penalty was made clear in the rules, as all fines and forfeitures must be, under the provisions of the Trade Union Acts,

POWER TO HOLD LAND.

Buildings
for trade
unions
may be
purchased
or leased.

Branches
have power
to hold
land.

§ VII.—Under this section trade unions are empowered to purchase and to hold land or houses in the names of the trustees for the time being, the land not to exceed one acre,* and for the purposes of this section every branch or lodge of a trade union is considered a distinct union. In the case of a branch or lodge holding land or other estate, it must be vested in the names of the trustees of such branch or lodge; but, if the rules so provide, these trustees may be the general trustees of the society, if they are legally and properly elected and appointed to be such trustees. It is not necessary that each branch shall be registered as a distinct union, as some have supposed, but it is necessary that the rules shall clearly define the mode of appointment and removal of such trustees, and their powers, and the powers of each and all of the branches to each other, and their relation to the central body of the union.

* When the Trade Union Act, 1871, was passed, the Friendly Societies Act, 1855, was in force, which Act limited the power of a friendly society to hold land to one acre. This presumably was the reason why the same limitation was introduced into the Trade Union Act, 1871. The Friendly Societies Act, 1875, removed that limitation (except in so far as regards "benevolent" societies), and there is no reason therefore why the limitation should not be removed as regards trade unions, so as to make the two classes of societies as nearly equal as possible in respect of their rights and privileges under the law. No injustice has been wrought by the limitation, as in no case has a trade union even sought to acquire an acre, but trade unions are now often quite on a par with friendly societies, and therefore should enjoy equal privileges.

TRUSTEES.

§ VIII.—This section of the principal Act declares that “all real and personal estate whatsoever, belonging to any trade union registered under this Act, shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of such trade union and the members thereof.”

Property of a trade union to be vested in trustees.

The section also provides that “the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch;” and § 3 of the Trade Union Act Amendment Act, 1876, adds—“or of the trustees of the trade union, if the rules of the trade union so provide.” It is therefore competent for those unions which have branches or lodges, to provide in their rules that all the real or personal estate of the union shall be vested in the general trustees of the union, thereby securing the integrity of the union against dismemberment by the secession of branches, and at the same time preventing the division of the funds.

Property of the branches of a trade union, as amended by the Act of 1876.

Trade unions have power to appoint general trustees for the whole of the union.

It is scarcely necessary to add that this power of centralisation should be exercised with great care, and, furthermore, that it should be clearly and distinctly stated in the rules so that every branch may know precisely its relationship to the central executive, and to the general trustees.

This section further declares that “all real and personal estate whatsoever belonging to any trade union registered under this Act” shall “be under the control of such trustees, their respective executors or administrators, according to their

Responsibility and power of trustees.

respective claims and interests;" "and in all actions or suits, or indictments, or summary proceedings before any Court of Summary Jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names as trustees of such trade union, without further description."

Attention must be paid as to mode of appointment and duties, in the rules.

Trustees, therefore, are the most responsible of all the officers of a trade union, and consequently it is of the utmost importance that proper provision be made in the rules of all trade unions with regard to the duties and powers of their trustees, the mode of their appointment, re-election, and removal, and also strictly defining their authority and jurisdiction. In every case, however, these rules must be strictly within the provisions of the Act.

In case of death or removal, the property to vest in the succeeding trustees.

The same section also provides that "upon the death or removal of any such trustees, the same real and personal estate shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever."

Provision in case of absence, etc., of trustee. Trade Union Act, 1876, s. 4.

In this section of the principal Act "stocks and securities in the public funds of Great Britain and Ireland" "which shall be transferred into the names of such new trustees," were excepted from its provisions. The inconvenience arising from this was, however, remedied by § 4 of the Trade Union Act Amendment Act, 1876, under which section the transfer of stock belonging to the union can be effected, in case of absence, etc., of the trustee

in whose name the stock belonging to the union is standing. (For the full text of this section see the Trade Union Act Amendment Act, 1876, § 4.)

Trade Union Act, 1876, s. 4.

ACTIONS AT LAW, SUING AND BEING SUED.

§ IX. Provides for the bringing of actions or prosecutions by or against registered trade unions. This may be done by the trustees or any other officer of such trade union who may be authorised so to do by the rules thereof. The section is as follows :—

Actions, etc., by or against trustees, etc.

“The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right, or claim to property of the trade union ; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office ; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place ; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the

summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union."

Authority
for bring-
ing or de-
fending ac-
tions to be
expressed
in the
rules.

The rules of a trade union registered under the Act should provide the necessary authority for bringing, or defending, actions brought by or against the union, and should define the powers and responsibilities of the several officers of such union. The rules should furthermore make provision for deciding as to what actions are to be brought or defended on behalf of the union, or in its name, so that the decision in all such cases shall be vested in the committee or board of management, for in the event of an action being brought in the proper form the court will presume that the necessary authority has been given. A bond or bill, payable to the trustees for the time being, must be sued on by the trustees when the action is brought, and not by the persons who were trustees when the bond or bill was made or drawn, if these are removed from office or have resigned.*

LIABILITY OF TRUSTEES.

Limitation
of respon-
sibility of
trustees.

§ X. Declares that "a trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union."

* Trades Councils are not usually registered under the Act. In such cases the officers may be held personally responsible for debts incurred even when properly authorised. Failing satisfaction the committee or executive may be held liable.

Trustees are only held responsible for what they actually receive, and for their own acts and neglect, and not for those of any other person with whom any trust fund may be deposited, nor for the deficiency of any securities, unless through their own wilful default.

Trustees are merely the depositaries of the money they receive, and are not made debtors to the union, so that if they are robbed of it, without fault on their part (in which case the onus of proof will lie with them), they are not liable to repay the amount. But they become Liability as to loss. liable for the loss of the funds or securities of the union if that loss occurs through their negligence, or through their failure to exercise due and reasonable care, and they are liable, like other officers, under § 12, for wilfully withholding, or fraudulently misapplying, the effects of the union, or for wilfully applying them to purposes other than those expressed or directed in the rules.

The rules of the union should, under the schedule of the Act, prescribe the mode of investing the funds, the relative powers of the trustees and the committee or board of management, and also the mode of withdrawing the funds, as there is no provision in the statute making trustees liable either as to investment or withdrawal of funds, except as given above, unless it be expressly provided for in the rules. The instrument of trust should definitely state the duties and responsibilities of the said trustees, and by what authority the funds are to be withdrawn.

Mode of investment, etc., to be defined in the rules.

AUDIT AND ACCOUNTS.

Trea-
surers, etc.
to account.

§ XI. declares that “every treasurer or other officer of a trade union, registered under this Act, shall render to the trustees of the trade union, or to the members of such trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons, by them to be appointed.” The words of this section seem to imply that the auditors are to be appointed by the trustees. In any case it appears to be necessary that the auditors elected shall have the approval of the trustees, or they may appoint others whom they may deem fit and proper persons. Rule 5, Schedule I., requires that the rules shall make provision “for an annual or periodical audit of accounts;” but, in addition to this, the trustees may require a special audit, if they deem it necessary, at a different time to that fixed by the rules.

Annual
audit re-
quired.

The trea-
surer, if re-
quired, to
give up all
properties
in his
custody.

The section further provides that the treasurer shall, if required to do so, forthwith hand over to the said trustees all moneys, securities, books, etc., in his hands or custody. On his failure to do so the trustees may sue such treasurer for the balance due from him, leaving him to set-off in such action the sums, if any, which he may have since paid on account of the said trade union. It further provides that the trustees shall be entitled to recover their full costs of the suit, to be taxed as between attorney and client.

SUMMARY PROCEEDINGS IN CASE OF FRAUD, OR WITH-
HOLDING MONEY OR PROPERTY OF THE TRADE
UNION.

§ XII.—This section provides a summary mode of remedy against defaulting officers, members, and other persons. The words of the section are as follow :—

Punish-
ment for
withhold-
ing money,
etc.

“ If any officer, member, or other person being, or representing himself to be, a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition, obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently mis-apply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the Court of Summary Jurisdiction for the place in which the registered office of the trade union is situate [or the Court of Summary Jurisdiction for the place where the offence has been committed] upon a complaint made by any person on behalf of such trade union, or by the Registrar, or in Scotland at the instance of the Procurator Fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects, to the trade union, or to repay the amount of money applied improperly,

Fraudu-
lently mis-
applying
or wilfully
with-
holding
the pro-
perty of
the union.

See Trade
Union Act,
1876, s. 5.

Order to
deliver up
the pro-
perty of
the union.

and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act."

Order for imprisonment in default.

Proceeding by indictment.

Unlawful application of funds other than fraudulent.

It is most important that the words—"or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof," should be clearly understood, and their meaning and application attended to in drafting or preparing rules for registration, inasmuch as under this section officers may be rendered liable for any application of the funds of the union to purposes other than those expressly provided for by the rules. For example, contributions, or loans, to another union, or votes of money to other associations, or moneys expended in demonstrations, bands of music, banners, etc., will be held to be illegal, unless the rules contain provisions whereby such grants or expenditure may be lawfully made or expended.

Jurisdiction in

The tribunal provided in the principal Act is "the Court of Summary Jurisdiction for the place

in which the registered office of the trade union is situate.” offences.
Tribunal.

This was amended by § 5 of the Trade Union Act, 1876, by the addition of the words—“or by the Court of Summary Jurisdiction for the place where the offence has been committed.” See the
Trade
Union Act,
1876, s. 5.

Unnecessary expense is thus avoided, both as regards the complainant and the defendant, and at the same time the ends of justice will be better served.

A complaint may be made by any person on behalf of such trade union, or by the Registrar, or in Scotland at the instance of the Procurator Fiscal of the court to which such complaint is competently made, or of the trade union, by his concurrence. The court “may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, and other effects of the trade union, or to repay the amount of money applied improperly, and to pay, if the court thinks fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings.” So far the defendant is dealt with as in a civil action, and he may avoid criminal proceedings by obeying the order of the court. If the defendant refuse to obey the order of the court, the section provides that—“in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any term not exceeding three months.” Com-
plainant.

Order to
deliver up
property,
or to repay
the
amount.

Order for
fine and
costs.

Imprison-
ment in
default.

The section further provides that nothing Proceed-

ing by indictment. therein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment, but no person can be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

REGISTRY OF TRADE UNION.

Regulations for registry. § XIII. provides that in registering a trade union, and the rules thereof, under this Act, the following provisions shall have effect:—

Name of union, copies of rules, and list and names of officers. (1.) The application to register the trade union shall be sent to the registrar, together with printed copies of the rules, and a list of the titles and names of the officers:

Trade union to be registered on complying with regulations as to registry. (2.) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules:

Regulations as to similarity of name. (3.) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public. (See rules of the Home Secretary, dated 1st of November, 1876.)* The following is the rule as to registry of name, issued by the Home Office in November, 1876:—"The registrar shall

Rules of Home Secretary, 1876.

* See Regulations under the Trade Union Acts, 1871 and 1876, Chap. IX.; also the forms at present in use.

not register a trade union under a name identical with that of any other existing trade union known to him, whether registered or not registered, or so nearly resembling such name as to be likely to deceive the members or the public."

- (4.) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form, and showing the same particulars as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar :
- (5.) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act, with respect to registry, have been complied with :
- (6.) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not

Regulations as to unions which have been in existence more than a year, as to statements of accounts.

Certificate of registry

Power of Secretary of State to make and issue rules.

exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.*

Registry
of unions
doing busi-
ness in
more than
one
country.

Considerable doubt existed as to whether those unions which had branches in England, Scotland, and Ireland, should be registered in each of those countries; this has been set at rest by § 6 of the Trade Union Act, 1876, which reads as follows:—

Trade
Union Act,
1876, s. 6.

“Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries.” (For the full text of this section, see Trade Union Act, 1876, § 6.)†

With-
drawal or
cancelling
of certifi-
cate.

No provision existed in the Act of 1871 for the withdrawing or cancelling of a certificate of registration; this has been provided for by § 8 of the Act of 1876, in the following cases:—

Trade
Union Act,
1876, s. 8.

“(1.) At the request of the trade union, to be evidenced in such manner as the chief or assistant registrar shall from time to time direct. (2.) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under § 6 of the Trade Union Act, 1876, or that such trade union has wilfully and after notice from a registrar whom it may concern, violated any of the provisions of the Trade Union

* See Regulations now in force, given in full, and also the forms, Chap. IX.

† See also new Regulations as to Registry, 1890.

Acts, or has ceased to exist." But in no case can the certificate of registration be withdrawn or cancelled except by the chief or assistant registrars. (See Trade Union Act, 1876, § 8.)

The following additional provisions are enacted by the Trade Union Act, 1876* :—

- (1.) A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, and enjoy all the rights of a member, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union. Membership of minors. Trade Union Act, 1876, s. 9.
- (2.) A trade union may, with the approval in writing of the chief or assistant registrars, change its name by the consent of not less than two-thirds of the total number of members. But the change of name shall not affect any right or obligation of the trade union, or of any member thereof. Change of name. Trade Union Act, 1876, s. 11.
- (3.) Any two or more trade unions may, by the consent of not less than two-thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them ; but no amalgamation shall prejudice any Amalgamation of two or more trade unions. Trade Union Act, s. 12.

* See Regulations and forms at present in force, Chap. IX.

right of a creditor of either or any union party thereto.

Registra-
tion of
changes of
names and
amalgama-
tions.
Trade
Union Act,
1876, s. 13.

- (4.) Notice in writing of every change of name or amalgamation signed by seven members, and countersigned by the secretary, accompanied by a statutory declaration by such secretary that the provisions of the Act have been complied with, must be sent to the chief registrar. In the case of amalgamations seven members and the secretary of each and every union party thereto must sign the notice.

Dissolu-
tion of a
trade
union.
Trade
Union Act,
1876, s. 14.

- (5.) The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary and seven members of the same, shall be sent within fourteen days thereafter to the office of the chief registrar, or, in the case of unions doing business exclusively in Scotland or Ireland to the assistant registrar for Scotland or Ireland respectively. The absence of a provision for dissolution in the rules of unions already registered does not invalidate their registration.

Penalty
for failure
to give
notice.
Trade
Union Act,
1876, s. 15.

- (6.) A trade union which fails to give any notice or send any document which it is required by the Act to give or send, is liable to a penalty of not less than one pound and not more than five pounds, and to an additional penalty of the like amount for each week during which the omission continues. These penalties can

be recovered from every officer or other person, whose duty it is, by the rules of the union, to give or send such document, or if there be no such officer or other appointed person, then every member of the committee of management is liable unless proved to have been ignorant of, or attempted to prevent the omission to give or send the same.

(For the full text of these provisions see the Trade Union Act, 1876, §§ 9, 11, 12, 13, 14, and 15.)

§ XIV.—With respect to the rules of a trade union registered under this Act, the following provisions shall have effect:—

Rules of registered trade union.

(1.) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act:

Compulsory provisions.

(2.) A copy of the rules shall be delivered by the trade union to every person on demand, on payment of a sum not exceeding one shilling.

Every person to have a copy of the rules on payment for the same.

The following are the order and words of the schedule:—

Of Matters to be provided for by the Rules of Trade Unions registered under this Act.

Provisions of Schedule I.

1. The name of the trade union and place of meeting for the business of the trade union.

Name and place of meeting.

2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof

Objects of the trade union, purposes

for which funds are applicable, conditions as to benefits, fines, etc.

Manner of making, altering, and rescinding rules. Appointment and removal of officers and trustees. Investment of funds and audit of accounts. Inspection of books, list of members, etc.

The fact of registration is no proof that the rules are legal.

Registered office of trade union.

shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.
5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.
6. The inspection of the books and names of the members of the trade union by every person having an interest in the funds of the trade union.

Each and every matter contained in these provisions must be attended to in drafting or preparing rules for registration, lest the omission thereof should render void the registration of such trade union. It must also be clearly understood that, as the registrar is not bound to see that the rules are in general conformity with law, the fact of registration is no proof that any particular rule, outside of the provisions required by the schedule, is legal.

§ XV.—Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed ; if any trade union under this Act is in operation for seven days without having such an office,

such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him; until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act.

Notice of situation of such office, and any change to be given to the registrar.

ANNUAL RETURNS TO BE SENT TO THE REGISTRAR.

§ XVI.—A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act, shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require;* and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Annual returns to be prepared as registrar may direct.

Receipts and expenditure.

Balance sheet, every member entitled to a copy.

Together with such general statement, there shall be sent to the registrar a copy of all alterations of rules, new rules, change

* See form of statement and rules of the registrar relating thereto, Chap. IX.

officers, etc., to be sent to the registrar. tions of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Penalty for non-compliance with this section. Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Penalty for false entries in, or wilful omissions from, such general statement. Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

Registrars. § XVII. — “The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act.

Annual reports. “The registrars shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.”

Circulation of false copies of rules, etc., a misdemeanour. § XVIII. — “If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any

person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanour," and in Scotland, of "a crime and offence." § 23. In Scotland a crime and offence.

LEGAL PROCEEDINGS.

§ XIX.—By this section it is provided that "in England and Ireland, all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts;" under which Acts also, "summary orders may be made and enforced on complaint before a Court of Summary Jurisdiction." Summary proceedings for offences, penalties, etc., in England and Ireland.

"In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the Procurator Fiscal of the county in the Sheriff Court, under the provisions of the Summary Procedure Act, 1864." In Scotland.

"In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court."

The constitution of the courts is provided for in the several clauses of the first sub-section of § 19, Constitution of the courts. which need not be here repeated.

It is not required by the Act that the information shall be stated in writing; but it is "provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law. Description of offence.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not Power of defendant

to plead
exemption
or excuse.

accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or prosecutor."

Complaint
to be made
within six
months.

Every information or complaint, whether in England, Ireland, or Scotland, must be laid or made within six calendar months from the time when the matter arose.

Particu-
lars of the
offence.

It is not necessary to set forth the sections of the statute further than is necessary to describe the offence. By the Summary Procedure Act the complaint must be in a form prescribed by the Act; which also requires that the particulars of the offence shall be set forth in the complaint, and also the nature of the forfeiture or penalty, and the alternative.

APPEALS TO QUARTER SESSIONS.

Appeal to
quarter
sessions.

§ XX.—In England or Ireland, if any party feels aggrieved by any order or conviction made by a Court of Summary Jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:—

- (1.) The appeal shall be made to some court of general or quarter sessions.*

* The remainder of this section is repealed by 47 & 48 Vict. c. 43, § 4. See Appeals, Chap. XVII.

APPEALS ON QUESTIONS OF LAW TO SUPERIOR COURTS.

In England and Ireland, if a question of law be involved, a decision of the Court of Quarter Sessions may be brought under review of the High Court, Queen's Bench Division. An appeal may also be made on points of law in the form of a special case stated by the justices, on the application of either party, for the opinion of the superior court of common law. The application must be made in writing within three days after the determination of the justices or magistrate. The appellant must enter into a recognizance to prosecute the appeal without delay, to submit to the judgment of the court, and to pay the costs. The court to which the case is transmitted shall hear and determine the questions of law arising thereon, and thereupon shall reverse, affirm, or amend the determination of the justices or magistrates, or remit to them with its opinion, and it may make such other order, or such order as to costs, as it thinks fit, such orders being final and conclusive.

An appeal in the form of a special case stated by the justices may be applied for in the first instance before the Court of Summary Jurisdiction; but in that case the person so appealing is taken to have abandoned his right to appeal to Quarter Sessions. (20 & 21 Vict. c. 43, s. 14.)

APPEAL FROM SHERIFF IN SCOTLAND.

§ XXI.—This section provides that “in Scotland it shall be competent to any person to appeal

Case for
the supe-
rior courts.

Special
case, 20 &
21 Vict.
c. 43,
ss. 1 & 2.

20 & 21
Vict. c. 43,
s. 6.

20 & 21
Vict. c. 43,
s. 14.

Appeal in
Scotland
prescribed

by 20
Geo. II.
c. 43.

Enforce-
ment of
penalties,
Scotland.

Special
case, Scot-
land—
civil suit.

against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no circuit courts to the High Court of Justiciary at Edinburgh,” under the Act 20 of George II. c. 43. “All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.”

In Scotland there is no mode of appealing by stating a special case on points of law for the opinion of the supreme courts. In a civil suit, if both parties are agreed upon the facts, and dispute only as to the law applicable thereto, they may, without raising any action or proceeding, or at any stage of an action or proceeding, present a special case to either division of the court of session for its opinion, and, if desired, its judgment; but the concurrence of both parties is required, and the terms of the case must be adjusted by the parties themselves, and be signed by their counsel.

In Scotland, the term “misdemeanour,” when it occurs in the Act, means a crime and offence. (§ 23.)

DISQUALIFICATION OF PERSONS TO ACT AS JUDGES OR MAGISTRATES.

Interested
parties not
to act as
members
of Court of
Appeal, or

§ XXII.—A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connection with which any offence under this Act is charged

to have been committed shall not act as or as a member of a Court of Summary Jurisdiction or Appeal for the purposes of this Act. of Court of Summary Jurisdiction.

This section applies equally to justices of the peace, magistrates, Scotch sheriffs, lords of justiciary, and to judges upon appeal.

DEFINITIONS AND SAVING CLAUSE.

§ XXIII.—This section gives “definitions as to the term Summary Jurisdiction Acts,” and “as to trade unions,” but as these definitions have been embodied in the earlier portions of this chapter, it is unnecessary to repeat them here. Definitions.

In the saving clause it is “provided that this Act shall not affect—

1. Any agreement between partners as to their own business ;
2. Any agreement between an employer and those employed by him as to such employment ; Saving clause as to agreements.
3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade or handicraft.”

The general principles on which these rules rest are the same throughout the United Kingdom.

REPEAL.

§ XXIV.—By this section the temporary Act for the Protection of the Funds of Trades Unions, passed in 1869, is repealed. Repeal clause.

SCHEDULES.

Schedule as to rules. The first schedule contains the “matters to be provided for by the rules of trade unions registered under this Act.”*

Schedule as to fees. The second schedule contains the “maximum fees” to be charged.†

* See § 14, page 101.

† See full Table of Fees, end of Chap. IX.—Regulations, etc.

CHAPTER VII.

THE TRADE UNION ACT, 1871.

A.D. 1871.

[34 & 35 VICT., CH. 31.]

AN Act to amend the Law relating to Trade Unions.

[29th June, 1871.]

Be it enacted as follows :

Preliminary.

I. This Act may be cited as “The Trade Union Act, Short title. 1871.”

Criminal Provisions.

II. The purposes of any trade union shall not, by Trade union not
reason merely that they are in restraint of trade, be deemed criminal.
to be unlawful, so as to render any member of such trade
union liable to criminal prosecution for conspiracy or
otherwise.

III. The purposes of any trade union shall not, by Trade union not
reason merely that they are in restraint of trade, be un- union not
lawful so as to render void or voidable any agreement or unlawful
trust. for civil
purposes.

IV. Nothing in this Act shall enable any court to enter- Trade
tain any legal proceeding instituted with the object of union
directly enforcing or recovering damages for the breach of contracts,
any of the following agreements, namely, when not
enforceable

1. Any agreement between members of a trade union
as such, concerning the conditions on which any
members for the time being of such trade union
shall or shall not sell their goods, transact
business, employ, or be employed :

- A.D. 1871. —
2. Any agreement for the payment by any person of any subscription or penalty to a trade union :
 3. Any agreement for the application of the funds of a trade union,—
 - (a.) To provide benefits to members ; or,
 - (b.) To furnish contributions to any employer or workman not a member of such trade union in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or,
 - (c.) To discharge any fine imposed upon any person by sentence of a court of justice ; or,
 4. Any agreement made between one trade union and another ; or,
 5. Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful.

Provisions
of 38 & 39
Vict. c. 60,
56&57Vict.
c. 39,
25&26Vict.
c. 89, etc.
nottoapply
to trade
unions.

V. The following Acts, that is to say,

- (1.) The Friendly Societies Acts [1855 and 1858],* and the Acts amending the same ;
- (2.) The Industrial and Provident Societies Act [1867],† and any Act amending the same ; and
- (3.) The Companies Acts, 1862 and 1867,‡

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect.

Registered Trade Unions.

Registry of
trade
unions.

VI. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and

* Now the Friendly Societies Act, 1875 (the 38 & 39 Vict. c. 60), as amended by the Acts of 1887, 1889, and 1893 respectively.

† Now the Industrial and Provident Societies Act, 1893 (the 56 & 57 Vict. c. 39). †

‡ Now the Companies Acts, 1862 to 1890. (See the Short Titles Act, 1892.)

otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void. A.D. 1871.

VII. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union. Buildings for trade unions may be purchased or leased.

VIII. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch,* and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees, the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description. Property of trade unions vested in trustees.

* Add: "or of the trustees of the trade union, if the rules of the trade union so provide." See Act of 1876, the 39 & 40 Vict. c. 22, s. 3.

A.D. 1871.

—
Actions,
etc., by or
against
trustees,
etc.

IX. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right, or claim to property of the trade union ; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without other description than the title of their office ; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place ; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union.

Limitation
of responsi-
bility of
trustees.

X. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union.

Treasurers,
etc., to
account.

XI. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account herein-after mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed ; and such

treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client.

XII. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers, or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not ex-

Punish-
ment for
withhold-
ing money,
etc.

A.D. 1871. ceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act.

Registry of Trade Union.

Regulations for registry.

XIII. With respect to the registry under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect:

- (1.) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act:
- (2.) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules:
- (3.) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public:*
- (4.) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a

* See Reg. v. Registrar of Friendly Societies, L. R. 7 Q. B. 741, in which it was held that the registrar was right in refusing both of two applications to register under the same name, in a case where a society had become divided into two sections, each claiming to have the same governing body.

general statement of the receipts, funds, effects, A.D. 1871. and expenditure of such trade union in the same form, and showing the same particulars as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar :

- (5.) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with :
- (6.) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect.

XIV. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect : Rules of registered trade union.

- (1.) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act :
- (2) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling.

XV. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed ; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall incur a penalty not exceeding five pounds for every day during which it is so in operation. Registered office of trade union.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him : until such notice is given the trade

A.D. 1871. union shall not be deemed to have complied with the provisions of this Act.

Annual
returns to
be prepared
as registrar
may direct.

XVI. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union; and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date, in such form, and shall comprise such particulars, as the registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence.

Registrars.

XVII. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act.

The registrars shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

Circulating
false copies

XVIII. If any person with intent to mislead or defraud gives to any member of a trade union registered under

this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanour.

A.D. 1871.
—
of rules,
etc., a mis-
demeanour

Legal Proceedings.

XIX. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts.

Summary
proceed-
ings for
offences,
penalties,
etc.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by the Summary Jurisdiction Acts.

Provided as follows :

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; that is to say,

(a.) In England,

(1.) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :

(2.) In the City of London, of the Lord Mayor or any alderman of the said city :

(3.) In any other place, of two or more justices of the peace sitting in petty sessions.

(b.) In Ireland,

(1.) In the police district of Dublin metropolis, of a divisional justice :

(2.) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal

A.D. 1871. of the county in the Sheriff Court, under the provisions of the Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.

Appeal to
quarter
sessions.

XX. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following:

(1.) The appeal shall be made to some court of general or quarter sessions.*

Appeal in
Scotland as
prescribed
by 20 Geo.
II. c. 43.

XXI. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by im-

* The remainder of this section is repealed by 47 & 48 Vict. c. 43, s. 4. See Chap. XVII., Appeals and New Trial.

prisonment for a term to be specified in the summons or A.D. 1871. complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown.

XXII. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connection with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.

Interested person not to act as a member of a court of appeal.

Definitions.

XXIII. In this Act—

Definitions.

The term Summary Jurisdiction Acts means as follows : As to the term "Summary Jurisdiction Acts."

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to Summary Convictions and Orders," and any Acts amending the same : *

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

In Scotland the term "misdemeanour" means a crime and offence.

[For definition of "trade union" see Act of 1816, § 16.]†

Provided that this Act shall not affect—

1. Any agreement between partners as to their own business ;

* See the Summary Jurisdiction Act, 1879 (the 42 & 43 Vict. c. 49), s. 32.

† This clause is repealed by the 39 & 40 Vict. c. 22, s. 16.

- A.D. 1871. —
2. Any agreement between an employer and those employed by him as to such employment ;
 3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.
- § 24 is repealed by the Statute Law Revision Act, 1883.

SCHEDULES.

FIRST SCHEDULE.

See s. 14. *Of Matters to be provided for by the Rules of Trade Unions Registered under this Act.*

1. The name of the trade union and place of meeting for the business of the trade union.

See 18 & 19
Vict. c.
63, s. 25. shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.

4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, and other officers.

5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.

6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union.

See s. 13,
sub-s. 6. The Second Schedule contains the maximum fees to be charged.*

* See full Table of Fees, end of Chapter IX., Regulations, etc.

CHAPTER VIII.

TRADE UNION ACT (1871) AMENDMENT ACT (1876).

[39 & 40 VICT., CH. 22.]

AN ACT TO AMEND THE TRADE UNION ACT, 1871.

WHEREAS it is expedient to amend the Trade Union Act, A.D. 1876.
1871:

Be it enacted as follows:

§ I.—This Act and the Trade Union Act, 1871, hereinafter termed the principal Act, shall be construed as one Act, and may be cited together as the “Trade Union Acts, 1871 and 1876,” and this Act may be cited separately as the “Trade Union Act Amendment Act, 1876.”

§ II.—Notwithstanding anything in s. 5 of the principal Act contained, a trade union, whether registered or unregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of s. 28 of the Friendly Societies Act, 1875.

§ III.—Whereas by s. 8 of the principal Act it is enacted that “the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch:” The said section shall be read and construed as if immediately after the hereinbefore recited words there were inserted the words “or of the trustees of the trade union, if the rules of the trade union so provide.”

§ IV.—When any person, being or having been a trustee of a trade union or of any branch of a trade union, and

Construction and short title.

Trade unions to be within s. 28 of Friendly Societies Act (1875).

Amendment of s. 8 of principal Act. See Friendly Societies Act, 1875, s. 16 (3).

Provision in case of

A.D. 1876. whether appointed before or after the legal establishment thereof, in whose name any stock belonging to such union or branch transferable at the Bank of England or Bank of Ireland is standing, either jointly with another or others, or solely, is absent from Great Britain, or Ireland respectively, or becomes bankrupt, or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union or branch, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union or branch; and such transfer shall be made by the surviving or continuing trustees, and if there be no such trustee, or if such trustees refuse or be unable to make such transfer, and the registrar so direct, then by the Accountant-General or Deputy or Assistant Accountant-General of the Bank of England or Bank of Ireland, as the case may be; and the Governors and Companies of the Bank of England and Bank of Ireland respectively are hereby indemnified for anything done by them or any of their officers in pursuance of this provision against any claim or demand of any person injuriously affected thereby.

Jurisdiction in offences. See Friendly Societies Act, 1875, s. 33 (1). See also s. 12, page 99.

§ V.—The jurisdiction conferred in the case of certain offences by s. 12 of the principal Act upon the court of summary jurisdiction for the place in which the registered office of a trade union is situate may be exercised either by that court or by the court of summary jurisdiction for the place where the offence has been committed.

Registry of unions doing business in more than one country. See Friendly Societies Act, 1875,

§ VI.—Trade unions carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the privileges of this Act or the principal

Act in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

A.D. 1876.
s. 11 (6).
See also s.
13, page
100.

In this section "country" means England, Scotland, or Ireland.

§ VII.—Whereas by the "Life Assurance Companies Act, 1870," it is provided that the said Act shall not apply to societies registered under the Acts relating to friendly societies: The said Act (or the amending Acts) shall not apply nor be deemed to have applied to trade unions registered or to be registered under the principal Act.

Life Assurance Companies Acts not to apply to registered unions. See Life Assurance Companies Act, 1870, s. 2. With-drawal or cancelling of certificate.

§ VIII.—No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the chief registrar of friendly societies or in the case of trade unions registered and doing business exclusively in Scotland or Ireland by the assistant registrar for Scotland or Ireland, and in the following cases:—

(1.) At the request of the trade union to be evidenced in such manner as such chief or assistant registrar shall from time to time direct.

(2.) On proof to his satisfaction that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under s. 6 of the Trade Union Act (1871), or that such trade union has wilfully and after notice from a registrar whom it may concern violated any of the provisions of the Trade Union Acts or has ceased to exist.

Not less than two months' previous notice in writing, specifying briefly the ground of any proposed withdrawal or cancelling of certificate (unless where the same is shewn to have become void as aforesaid, in which case it shall be the duty of the chief or assistant registrar to cancel the same forthwith), shall be given by the chief or assistant registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled except at its request.

A trade union whose certificate of registration has been withdrawn or cancelled shall from the time of such withdrawal or cancelling absolutely cease to enjoy as such the privileges of a registered trade union, but without prejudice

A.D. 1876. to any liability actually incurred by such trade union, which may be enforced against the same as if such withdrawal or cancelling had not taken place.

Member-
ship of
minors.

§ IX.—A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary, and may, subject to the rules of the trade union, enjoy all the rights of a member except as herein provided, and execute all instruments and give all acquittances necessary to be executed or given under the rules, but shall not be a member of the committee of management, trustee, or treasurer of the trade union.

Nomina-
tion. See
s. 5, page
96 ante.

§ X.—A member of a trade union not being under the age of sixteen years may, by writing under his hand, delivered at, or sent to, the registered office of the trade union, nominate any person not being an officer or servant of the trade union (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator), to whom any moneys payable on the death of such member not exceeding £50* shall be paid at his decease, and may from time to time revoke or vary such nomination by a writing under his hand similarly delivered or sent, and on receiving satisfactory proof of the death of a nominator, the trade union shall pay to the nominee the amount due to the deceased member not exceeding the sum aforesaid.

Change of
name.

§ XI.—A trade union may, with the approval in writing of the chief registrar of friendly societies, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, of the assistant registrar for Scotland or Ireland respectively, change its name by the consent of not less than two-thirds of the total number of members.

No change of name shall affect any right or obligation of the trade union or of any member thereof, and any pending legal proceedings may be continued by or against the trustees of the trade union or any other officer who may sue or be sued on behalf of such trade union notwithstanding its new name.

* Extended to £100 by the Provident Nominations and Small Intestacies Act, 1883.

§ XII.—Any two or more trade unions may, by the consent of not less than two-thirds of the members of each or every such trade union, become amalgamated together as one trade union, with or without any dissolution or division of the funds of such trade unions, or either or any of them; but no amalgamation shall prejudice any right of a creditor of either or any union party thereto.

§ XIII.—Notice in writing of every change of name or amalgamation signed, in the case of a change of name, by seven members, and countersigned by the secretary of the trade union changing its name, and accompanied by a statutory declaration by such secretary that the provisions of this Act in respect of changes of name have been complied with, and in the case of an amalgamation signed by seven members and countersigned by the secretary of each or every union party thereto, and accompanied by a statutory declaration by each or every such secretary that the provisions of this Act in respect of amalgamations have been complied with, shall be sent to the central office established by the Friendly Societies Act, 1875, and registered there, and until such change of name or amalgamation is so registered the same shall not take effect.

§ XIV.—The rules of every trade union shall provide for the manner of dissolving the same, and notice of every dissolution of a trade union under the hand of the secretary, and seven members of the same, shall be sent within fourteen days thereafter to the central office hereinbefore mentioned, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland respectively, and shall be registered by them. Provided that the rules of any trade union registered before the passing of this Act shall not be invalidated by the absence of a provision for dissolution.

§ XV.—A trade union which fails to give any notice or send any document which it is required by this Act to give or send, and every officer or other person bound by the rules thereof to give or send the same, or if there be no such officer, then every member of the committee of

A.D. 1876.

Amalgamation.

Registration of changes of names and amalgamations.

Dissolution

Penalty for failure to give notice.

A.D. 1876. management of the union, unless proved to have been ignorant of, or to have attempted to prevent the omission to give or send the same, is liable to a penalty of not less than £1 and not more than £5, recoverable at the suit of the chief or any assistant registrar of friendly societies, or of any person aggrieved ; and to an additional penalty of the like amount for each week during which the omission continues.

Definition
of trade
union
altered.

§ XVI.—So much of s. 23 of the principal Act as defines the term trade union, except the proviso qualifying such definition, is hereby repealed, and in lieu thereof be it enacted as follows :—

The term “trade union” means any combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, whether such combination would or would not, if the principal Act had not been passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade.

NOTE.—See Regulations and complete set of forms now in use, next chapter, Chap. IX.

CHAPTER IX.

REGULATIONS AND FORMS, UNDER THE TRADE UNION ACTS, 1871 AND 1876.

IN pursuance of the powers vested in the Home Secretary by the above-mentioned statutes, the Right Honourable Richard Assheton Cross, one of Her Majesty's Principal Secretaries of State, revoked the Regulations made by the Right Honourable H. A. Bruce on the 8th December, 1871, and the Right Honourable R. Lowe on the 18th August, 1873, and made the following Regulations in lieu thereof.

(1.) In the following Regulations and Forms the terms "Chief Registrar" and "Assistant Registrar" mean respectively the chief registrar and assistant registrar of friendly societies, and the term "Central Office" means the central office established under the Friendly Societies Act, 1875.

(2.) The registrar shall not register a trade union under a name identical with that of any other existing trade union known to him, whether registered or not registered, or so nearly resembling such name as to be likely to deceive the members or the public.

(3.) Upon an application for the registration of a trade union which is already in operation, the registrar, if he has reason to believe that the applicants have not been duly authorised by such trade union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary.

(4.) Application for registry of a trade union shall be made in Form A.* subjoined to these Regulations, and

* See p. 120.

shall be accompanied by two printed copies of the rules marked and signed, as mentioned in the said Form.

(5.) The certificate of registry of a trade union shall be in Form B.* subjoined to these Regulations.

(6.) An alteration of the rules of a trade union may be either—

(a.) A partial alteration, consisting of the addition of a new rule or part of a rule or rules to the existing rules, or of the substitution of a new rule or part of a rule or rules for any of the existing rules, or of a rescission of any of the existing rules or any part thereof without any substitution, or of more than one or all of these modes ; or,

(b.) A complete alteration consisting of the substitution of an entire set of rules for the existing set of rules.

(7.) An application for the registration of a partial alteration of rules must be made by seven members of the trade union, and must be made in the Form C.† annexed hereto, and must be accompanied by a statutory declaration in Form D.‡ hereto annexed, and by a printed copy of the existing rules, and by the following documents :—

(a.) If the partial alteration consists of the addition or substitution of a new rule or part of a rule or rules, two copies of such rule or part of a rule or rules, each copy being marked O. and signed by each of the applicants.

(b.) If the partial alteration consists of the rescission of any of the rules without any substitution, two copies of the resolution for such rescission, each copy being marked O. and signed by each of the applicants.

The registrar, before registering the partial alteration of rules, shall ascertain that the rules of the trade union, if altered in accordance with the proposed partial alteration, will provide for all the matters required by the above-mentioned Acts to be provided for by the rules of a registered trade union.

(8.) The certificate of registry of a partial alteration

* See p. 122.

† See p. 122.

‡ See p. 123.

shall be in Form E.* annexed hereto, and shall be delivered to the applicants, attached to one of the copies of the new rule or rules, or, when the alteration consists of rescission merely, attached to the old set of rules.

(9.) An application for the registration of a complete alteration of rules shall be made by seven members of the trade union, and shall be in Form F.† annexed hereto, and must be accompanied by a statutory declaration in Form D.‡ annexed hereto, and by a printed copy of the existing rules and by two printed copies of the new rules, each copy being marked P. and signed by each of the applicants; and the registrar, before registering the new set of rules, shall ascertain that it provides for all matters which, by the above-mentioned Acts, are to be provided for by the rules of a registered trade union.

(10.) The certificate of registry of a complete alteration of rules shall be in Form G.§ annexed hereto, and shall be delivered to the applicants attached to one of the copies of the new set of rules.

Recording of Rules already Registered.

(11.) An application to record in one country rules or amendments of rules registered in another shall be made by the secretary or other officer of the trade union in Form H.|| or I.¶ hereto annexed, and shall be accompanied by a copy of such rules or amendments duly authenticated.

Withdrawal or Cancelling of Certificate of Registration.

(12.) Every request by a trade union for withdrawal or cancelling of its certificate of registration shall be sent to the chief registrar or assistant registrar for Scotland or for Ireland, as the case may require, in Form J.** annexed hereto.

(13.) Notice before withdrawal or cancelling of certificate, where required, shall be in Form K.†† annexed hereto.

* See p. 124.

† See p. 124.

‡ See p. 123.

§ See p. 126.

|| See p. 127.

¶ See p. 127.

** See p. 128.

†† See p. 129.

(14.) The withdrawal or cancelling of certificate shall be in Form L.* annexed hereto.

Registered Office.

(15.) Notice of the situation of the registered office of a trade union, and of any change therein, shall be given to the registrar in Form M.† annexed hereto.

(15a.) The removal of the registered office of a trade union from one country, within the meaning of § 6 of the Trade Union Act Amendment Act, 1876, to another shall not render it necessary to re-register the trade union in the country in which its new registered office is situate.

(15b.) All matters requiring registry shall be registered in, and returns and notices sent to the registrar of the country in which the registered office of a trade union is for the time being situate, copies of matters requiring registry being forwarded for recording to the registrars of each of the other countries in which it is carrying, or intends to carry on business.‡

Change of Name.

(16.) The application for approval, and notice of change of name of a trade union, shall be in Form N.§ annexed hereto, and shall be sent in duplicate, accompanied by a statutory declaration in Form O.|| annexed hereto, to the chief registrar, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, as the case may require. The chief or assistant registrar, before approving the change of name, shall ascertain that the new name is not identical with that of any existing trade union known to him, or so nearly resembling the same as to be

* See p. 129.

† See p. 130.

‡ These two Rules were made by the Home Secretary and the Secretary of State for Scotland under the Trade Union Acts, 1871 and 1876, and the Secretary for Scotland Act, 1887, and dated 29th April, 1890.

§ See p. 130.

|| See p. 131.

calculated to deceive; and if the change of name be approved, the word “approved” shall be written at the foot or end of each copy of the application, and the same shall be signed by the chief registrar or by such assistant registrar, as the case may require, and shall be transmitted by him to the central office for registry.

Transfer of Stock.

(17.) Every application to the registrar to direct a transfer of stock shall follow, as near as may be, Form P.* annexed hereto, and shall be accompanied by a statutory declaration in Form Q.† annexed hereto, or as near thereto as the facts admit, and by the certificate of the stock in respect of which the application is made.

(18.) Before making the application, the trade union shall submit to the registrar for examination a draft copy on foolscap paper, written on one side only, of the proposed application and declaration.

(19.) The registrar, before directing the transfer, may require further proof of any statement in the application.

(20.) The registrar shall give a direction in Form R.‡ annexed hereto, so framed in each case as to suit the particular circumstances, and shall register the same and deliver the same to the applicants endorsed with the word “registered,” and duly authenticated.

Dissolution.

(21.) When a trade union is dissolved, notice of the dissolution shall be given to the central office, or in the case of trade unions registered and doing business exclusively in Scotland or Ireland, to the assistant registrar for Scotland or Ireland, as the case may require, in duplicate in Form S.§ annexed hereto, and the central office or assistant registrar shall return one copy to the trade union, endorsed with the word “Registered,” and duly authenticated.

* See p. 132.

† See p. 135.

‡ See p. 134.

§ See p. 136.

Amalgamation.

(22.) Where two or more trade unions become amalgamated together, notice shall be given to the central office in duplicate in Form T.* annexed hereto, accompanied by statutory declarations from each such trade union in Form U.† annexed hereto, and the central office shall return to the amalgamated trade union one copy of the notice, endorsed with the word "Registered," and duly authenticated.

Nominations.

(23.) Every registered trade union shall keep a record or register of all nominations made by the members, and of all revocations and variations of the same, and for the recording or registering of every such nomination, revocation, or variation the rules of the trade union may require the member nominating to pay a sum not exceeding threepence.

Fees.

(24.) The following fees shall be payable under the Acts :

	£	s.	d.
For the certificate of registry of a trade union	1	0	0
For the certificate of registry of an alteration of rules	0	10	0
For the certificate of registry of a change of name	0	10	0
For a direction to transfer stock ...	1	0	0
For registry of notice of a dissolution ...	0	2	6
For registry of amalgamation	0	10	0
For every document required to be authenticated by the registrar, not chargeable with any other fee ...	0	2	6
For every inspection on the same day of documents (whether one or more), in			

* See p. 137.

† See p. 137.

the custody of the registrar, relating to	£	s.	d.
one and the same trade union	...	0	1 0

For every copy or extract of any document in the custody of the registrar, not exceeding 216 words 1s., and if exceeding that number 4d. per folio of 72 words, in addition to the fee for authentication.

No fee is payable for the recording of rules or documents already registered in another country, or for the registry or recording of—

The cancelling or withdrawal of certificate of registry.
Any notice of change of office.

Any document or copy of document supplied to a public department.

Any document in respect of which a fee is already chargeable, under or by virtue of the Act and of any other statute.

The chief registrar may also dispense with the fee for inspection of documents in cases where he may consider it for the public interest to do so.

Authentication of Documents by Registrar.

(25.) Every document under the Trade Union Acts, 1871 and 1876, bearing the seal of the central office, or the signature of the chief registrar or the assistant registrar for Scotland or Ireland, as the case may require, shall be deemed to be duly authenticated for the purposes of the said Acts and the Regulations made thereunder.

Whitehall,
1st November, 1876.

RICH. ASSHETON CROSS.

For societies registered in Scotland the address "43, New Register House, Edinburgh," and in Ireland "16, Dame Street, Dublin," will be substituted in the following Forms for "28, Abingdon Street, Westminster."

Official Forms to be used under the Trade Union Acts, 1871 and 1876, the 34 & 35 Vict. c. 31, and 39 & 40 Vict. c. 22.

FORM A.—Reg. 4.

Application for Registry of Trade Union. (Fee payable £1.)

1. This application is made by the seven persons whose names are subscribed at the foot hereof.

2. The name under which it is proposed that the Trade Union, on behalf of which this application is made, shall be registered is* , as set forth in Rule No.

* Name
of trade
union.

To the best of our belief there is no other existing Trade Union, whether registered or not registered, the name of which is identical with the proposed name, or so nearly resembles the same as to cause confusion.

* Name
of trade
union.

3. The place of meeting for the business of the* and the office to which all communications and notices may be addressed, is at , as set forth in Rule No.

* Name
of trade
union.

4. The* was established on the day of

* Name
of trade
union.

5. The whole of the objects for which the* is established, and the purposes for which the funds thereof are applicable, are set forth in Rule No.

6. The conditions under which members may become entitled to benefits assured, are set forth in Rule No.

7. The fines and forfeitures to be imposed on members are set forth in Rule No.

8. The manner of making, altering, amending, and rescinding rules is set forth in Rule No.

9. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in Rule No.

10. The provision for the investment of funds, and for the periodical audit of accounts, is set forth in Rule No.

11. The provision for the inspection of the books and names of the members, by every person having an interest in the funds, is set forth in Rule No.

12. The provision for the manner of dissolving the Trade Union is set forth in Rule No.

13. Accompanying this application are sent—

1. Two printed copies, each marked A., of the Rules.
2. A list, marked B., of the titles and names of the officers.

3. A general statement, marked C.* showing—

(a.) The assets and liabilities of the
at the date up to which the statement is
made out.

(b.) The receipts and expenditure of†
during the year preceding the date‡ up to
which the statement is made out, such ex-
penditure being set forth under separate
heads corresponding to the several objects
of the Trade Union.

14. § We have been duly authorised by the Trade Union
to make this application on its behalf, such authorisation
consisting of

(Signed) 1.
2.
3.
4.
5.
6.
7.

day of 189 .

* This will only be necessary in case where the trade union has been in operation more than a year previous to the date of the application
† Name of trade union.

‡ This date will be fixed by the Registrar.

§ This will only be necessary where the trade union has been in operation before the date of the application.

In paragraph 14 must be stated whether the authority to make this application was given by a “resolution of a general meeting of the Trade Union,” or, if not, in what other way it was given.

The two copies of rules must be signed by the seven members signing this application.

The application should be *dated*, and forwarded to “The Registrar of Friendly Societies, 28, Abingdon Street, Westminster, S.W.” [or, for Scotland, to “The Registrar of Friendly Societies, 43, New Register House, Edinburgh”; or, for Ireland, to “The Registrar of Friendly Societies, 16, Dame Street, Dublin”].

To accompany

Form A.—LIST B. _____

Name of Trade Union

State the titles and names of the Officers.

Names	Addresses	Office held in the Trade Union
-------	-----------	--------------------------------

FORM B.—Reg. 5.

Certificate of Registry of Trade Union.

No. .

* Name of trade union. It is hereby certified that the* has been registered under the Trade Union Acts, 1871 and 1876, this day of , 189 .

[Seal of Central Office, or signature of Assistant Registrar for Scotland or Ireland.]

FORM C.—Reg. 7.

Application for Registry of partial Alteration of Rules.

* Name of trade union. * Trade Union. Register No. .

1. This application for the registry of a partial alteration of the rules of the* Trade Union, is made by the seven persons whose names are subscribed at the foot hereof.

With this application are sent—

- (a.) A printed copy of the registered rules marked to show where, and in what way, they are altered :
- (b.) Two printed [*or written*] copies of the alteration, each marked O., signed by each of the applicants :

(c.) A statutory declaration of an officer of this Trade Union, that in making the alteration of rules now submitted for registry the rules of the * Trade Union were duly complied with. * Name of trade union.

2. We have been duly authorised by the* Trade Union to make this application on its behalf, such authorisation consisting of a resolution passed at a general meeting on the† day of . † Here insert the date, or, if there was no such resolution, state in what other way the authorisation was given.

- (Signed)
1.

2.

3.

4.

5.

6.

7.
- † Here insert the date, or, if there was no such resolution, state in what other way the authorisation was given.

‡ day of 189 . ‡ Here insert the date.
To the Registrar of Friendly Societies,
28, Abingdon Street, Westminster, S.W.

FORM D.—Reg. 7, 9.

Declaration accompanying Alteration of Rules.

* Trade Union. Register No. . * Name of trade union.
I, , of , an officer of the above-named Trade Union, do solemnly and sincerely declare that in making the alteration of the rules of the Trade Union, the application for the registry of which is appended to this declaration, the rules of the said Trade Union have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled “An Act to repeal an Act of the present

“Session of Parliament, intituled ‘An Act for the more
 “‘effectual Abolition of Oaths and Affirmations taken and
 “‘made in various Departments of the State, and to
 “‘substitute Declarations in lieu thereof, and for the more
 “‘entire Suppression of voluntary and extra-judicial Oaths
 “‘and Affidavits, and to make other Provisions for the
 “‘Abolition of unnecessary Oaths.’”

Taken and received be-
 fore me, one of Her
 Majesty’s justices of
 the peace for the county
 of _____,
 at _____, in
 the said county, this
 day of _____,
 189 .

FORM E.—Reg. 8.

Certificate of Registry of partial Alteration of Rules.

* Name of trade union.	* _____ Trade Union.	Register No. _____.
------------------------------	-------------------------	---------------------

It is hereby certified that the foregoing partial altera-
 tion has been registered under the above-mentioned Acts
 this _____ day of _____, 189 .

[Seal of Central Office, or signature of Assistant
 Registrar for Scotland or Ireland.]

FORM F.—Reg. 9.

*Form of Application for Registry of complete Alteration of
 Rules.*

* Name of trade union.	* _____ Trade Union.	Register No. _____.
------------------------------	-------------------------	---------------------

1. This application for the registry of a complete altera-
 tion of the registered rules of the* _____ Trade

Union is made by the seven persons whose names are subscribed at the foot hereof.

2. The complete alteration submitted for registry is the substitution of the set of rules, two printed copies of which (each copy marked P., and signed by the applicants) accompany this application, for the set of rules already registered.

3. The name under which it is proposed that the Trade Union on behalf of which this application is made shall be registered is* as set forth in Rule No. . * Name of trade union.

To the best of our belief there is no other existing Trade Union, whether registered or not registered, the name of which is identical with the proposed name or so nearly resembles the same as to cause confusion.

4. The place of meeting for the business of the * , and the office to which all communications and notices may be addressed, is at as set forth in Rule No. . * Name of trade union.

5. The* was established on the day of . * Name of trade union.

6. The whole of the objects for which the* is established, and the purposes for which the funds thereof are applicable, are set forth in Rule No. . * Name of trade union.

7. The conditions under which members may become entitled to benefits assured are set forth in Rule No. .

8. The fines and forfeitures to be imposed on members are set forth in Rule No. .

9. The manner of making, altering, amending, and rescinding rules is set forth in Rule No. .

10. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in Rule No. .

11. The provision for the investment of funds and for the periodical audit of accounts is set forth in Rule No. .

12. The provision for the inspection of the books and names of the members by every person having an interest in the funds is set forth in Rule No. .

13. The provision for the manner of dissolving the Trade Union is set forth in Rule No. .

14. This application is accompanied by a statutory declaration of
 an officer of the said Trade Union, to the effect that, in making the alteration of rules now submitted for registry, the rules of the Trade Union were duly complied with.

* Name of trade union. 15. We have been duly authorised by the* Trade Union to make this application on its behalf, such authorisation consisting of a resolution passed at a general meeting held on the† day of .

† Here insert the date, or, if there was no such resolution, state in what other way authorisation was given.

(Signed) 1.
 2.
 3.
 4.
 5.
 6.
 7.

day of , 189 .

The Registrar of Friendly Societies,
 28, Abingdon Street,
 Westminster, S.W.
 [or 43, New Register House, Edinburgh ;
 or 16, Dame Street, Dublin.]

FORM G.—Reg. 10.

Certificate of Registry of complete Alteration of Rules.

* Name of trade union. * Trade Union. Register No. .

It is hereby certified that the set of rules, copy whereof is appended hereto, has been registered under the above-mentioned Acts in substitution for the set of rules already registered for the * Trade Union this day of 189 .

[Seal of Central Office, or signature of Assistant Registrar for Scotland or Ireland.]

FORM H.—Reg. 11.

Application to record Rules registered in another Country.

* Trade Union.

Register No. . [Add England, Scotland, or Ireland, of * Name
as the case may be.] union. trade

To the Registrar of Friendly Societies.

Application to record the rules of the Trade
Union is made by the secretary of the same.1. The Trade Union carries [or intends to carry] on
business in [Scotland, Ireland, or England, as the case may
be] as well as in England, Scotland, or Ireland where the
same is registered.2. With this application are sent two printed [or written]
copies of the rules of the Trade Union, one of such copies
being under the seal of the Central Office [or under the
signature of the Assistant Registrar for Scotland or
Ireland].

(Signed)

Registered Office

Secretary.

Date day of .

FORM I.—Reg. 11.

Application to record Amendments of Rules already recorded.

* Trade Union.

Register No. . [Add England, Scotland, or Ireland, of * Name
as the case may be.] union. tradeRecorded in [Scotland, Ireland, or England,
as the case may be] No. .

To the Registrar of Friendly Societies.

Application to record an amendment of the rules of
the Trade Union is made by the secretary of
the same.1. The Trade Union carries on business in [Scotland,
Ireland, or England, as the case may be] as well as in [England,
Scotland, or Ireland] where the same is registered.

2. The rules of the Trade Union have been already recorded in [Scotland, Ireland, or England, *as the case may be*].

3. With this application are sent two printed [or written] copies of an amendment of such rules lately registered, one of such copies being under the seal of the Central Office [or under the signature of the Assistant Registrar for Scotland or Ireland].

(Signed)

Registered Office

Secretary.

Date day of

FORM J.—Reg. 12.

Request to withdraw or cancel Certificate of Registry.

* Name
of trade
union.

* Trade Union.

Register No. . [If the Trade Union is registered in Scotland or Ireland, add Scotland or Ireland, *as the case may be*.]

To the Chief Registrar [or in the case of a Trade Union registered and doing business in Scotland or Ireland exclusively, to the Assistant Registrar for Scotland or Ireland, *as the case may be*].

1. The above-mentioned Trade Union desires that its certificate of registry under the Trade Union Acts may be withdrawn [or cancelled] on the following ground, viz., [state reason for desiring withdrawal or cancelling of certificate

* If not at a general meeting, state in what manner the request has been determined upon. of registry] and at a general meeting* duly held on the day of 189 , it was resolved as follows:—
“That the trustees be authorised to request the Chief (or Assistant) Registrar to withdraw [or cancel] the certificate of registry of this Trade Union.”

2. This request is made by the trustees accordingly.

} Trustees.

Registered Office

Date

189 .

To be addressed to the Chief or other Registrar as the case may be.

FORM K.—Reg. 13.

Notice before Withdrawal or Cancelling of Certificate of Registry.

Trade Union.

Register No. . [If the Trade Union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

Notice is hereby given to the above-mentioned Trade Union that it is the intention of the Chief Registrar [or Assistant Registrar for Scotland or Ireland, as the case may be] to proceed on the* day of 189 , to cancel [or to withdraw] the registry of the Trade Union, unless cause be shown to the contrary in the meantime.

* This will be not less than two months after the date of the notice.

The ground of such proposed cancelling [or withdrawal] is that the certificate of registry has been obtained by fraud [or mistake, or that the registry of the Trade Union has become void under s. 6 of the Trade Union Act, 1871, or that the Trade Union has wilfully and after notice from me violated the provisions of the above-mentioned Acts or has ceased to exist]. [The facts should be briefly specified where practicable.]

(Signature)

Chief Registrar [or Assistant Registrar for Scotland or Ireland].

Date 189 .

FORM L.—Reg. 14.

Withdrawal or Cancelling of Certificate of Registry.

Trade Union.

Register No. . [If the Trade Union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.]

The certificate of registry of the above-mentioned Trade Union is hereby withdrawn or cancelled at its request

[or as the case may be. The Registrar may, if he thinks fit, add a statement as in Form K. of the ground of the cancelling.]

(Signature)

Chief Registrar [or Assistant Registrar

Date . for Scotland or Ireland].

FORM M.—Reg. 15.

Notice of Change of Registered Office.

* Name
of trade
union.

* Trade Union. Register No. . [If the
Trade Union is registered in Scot-
land or Ireland, add Scotland or
Ireland, as the case may be.]

To the Registrar of Friendly Societies.

Notice is hereby given that the Registered Office of the
above-mentioned Trade Union is removed from

in the Parish of , and is now situated at

in the Parish of in the county of .

Dated this day of 189 .

} Trustees.

To be addressed to the Chief Registrar or }
other Registrar, as the case may be. }

NOTE.—Until this notice has been given, the Trade Union
will not have complied with the provisions of the Act.

.....

This part
to be de-
tached by
the Regis-
trar when
the notice
is regis-
tered, and
returned to
the trade
union.

Received this day of notice of removal
of the Registered Office of the , Register

No. , to in the County of .

[Seal of Central Office, or signature of a Registrar.]

FORM N.—Reg. 16.

Application for Approval, and Notice of Change of Name.

* Name
of trade
union.

Name already registered*

Register No. . [If the Trade Union is registered
in Scotland or Ireland, add Scotland or Ireland, as the case
may be.]

To the Chief Registrar [*or Assistant Registrar for Ireland or Scotland, as the case may be*] and Central Office.

Application for approval of a change of name of the above-mentioned Trade Union is made by the persons whose names are subscribed at the foot hereof.

The following is a copy of a resolution passed by the consent of two-thirds of the total number of members of the Trade Union :—

[*The resolution to be copied at length.*]

And notice of the said change is hereby given to the Central Office for registry there.

		1.	
	Secretary.	2.	
		3.	
		4.	
Registered Office	.	5.	
Date	189	.	6.
		7.	
			} Members.

To be directed to the Chief or other Registrar, as the case may be.

FORM O.—Reg. 16.

Declaration to accompany Application for Approval of Change of Name.

County of .
 Name of Trade Union .
 Register No. . [*If the Trade Union is registered in Scotland or Ireland, add Scotland or Ireland, as the case may be.*]
 I, of , the secretary of the above-named Trade Union, do solemnly and sincerely declare that in making the change of name, notice of which is appended to this declaration, the provisions of the 39 & 40 Vict. c. 22, in respect of change of name, have been complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in the fifth and sixth years of the reign of His late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Session of Parliament, intituled 'An Act for the more effectual Abolition of Oaths and Affirmations taken and made in various Departments of the State, and to substitute Declarations in lieu thereof, and for the more entire Suppression of voluntary and extra-judicial Oaths and Affidavits, and to make other Provisions for the Abolition of unnecessary Oaths.'"

Taken and received before
 me, one of Her Majesty's
 justices of the peace for
 the said county of _____,
 at _____, in the said
 county, this _____ day
 of _____ 189 .

FORM P.—Reg. 17.

[N.B.—A draft copy of this application, on foolscap paper, written on one side only, is to be submitted to the Registrar for examination.]

Application for Direction to transfer Stock.

* Name
 of trade
 union.

This form
 applies
 (with the
 necessary
 modifica-
 tions) to a
 branch of
 a trade
 union.

* Trade Union. Reg. No. .

Application for a direction to transfer stock is made by the four persons whose names are subscribed at the foot thereof, being the secretary and three members of the above-mentioned Trade Union.

1. The Trade Union on the _____ day of _____, duly appointed _____, of _____ in the county of _____
 [here name and describe all the trustees then appointed] to be trustees.

2. On the _____ day of _____ the sum of _____ was invested in the purchase of _____ stock transferable at the Bank of England [or Ireland] in the names of the said

trustees, and the same is still standing in their names, as follows [*state exactly in what names the Stock stands*]:—

3. The said _____ is absent from Great Britain [or [This clause will not be Ireland] [or became bankrupt on the _____ day of _____, necessary or filed a petition (or executed a deed) for liquidation of _____ where the his affairs by assignment or arrangement or for com- application is in conse- position with his creditors, on the _____ day of _____, quence of or has become a lunatic, or died on the _____ day of _____, the merere- or has not been heard of for _____ years, and it is not trustee.] known whether he is living or dead].

4. On the _____ day of _____ the Trade Union duly removed the said _____ from his office of trustee, and appointed _____ [*give full name and description*] in his place.

5. Since such removal application has been made in writing to the said [*removed trustee*] to join in the transfer of the said Stock into the names of the said [*here give the names of the other trustees, and of the new trustee appointed in the place of the one removed*] as trustees for the said Trade Union, but he has refused to comply [or has not complied] with such application. [*This paragraph may be omitted, or varied, as the facts require.*]

6. This application to the Registrar is made pursuant to 39 & 40 Vict. c. 22, s. 4, that he may direct the said Stock to be transferred into the names of the said _____ as trustees for the Trade Union by _____ [*This blank should be filled by the names of the surviving or continuing trustees (if any), and if they be willing and able to make the transfer; but if there be no such trustee, or if any such trustee refuse or be unable to make the transfer, then by the words "the Accountant General, or Deputy, or Assistant Accountant General of the said Bank"; and a full statement of the facts and of the grounds of such refusal or inability should be made.*]

Secretary.

Member.

Member.

Member.

Registered Office

Date _____ day of _____ 189 .

To the Chief Registrar, or other Registrar, as the case may be.

FORM Q.—Reg. 17.

This form applies (with the necessary modifications) to a branch of a trade union.

Declaration verifying Statements in an Application for Direction to transfer Stock.

County of _____ to wit.
 * _____ Trade Union. Register No. _____
 I, _____, of _____,
 in the county of _____, do solemnly and sincerely
 declare that I am the secretary of the above-mentioned
 Trade Union.

That _____ and _____
 whose names are subscribed at the foot of the application
 hereto annexed, are members of the said Trade Union.

That on the _____ day of _____, 189____,
 and _____ therein mentioned, were
 appointed trustees of the said Trade Union.

That on the _____ day of _____, 189____, the sum
 of _____ was invested in the purchase of
 Stock, transferable at the Bank of England [*or Ireland*]
 in the names of the said trustees, and the declarant believes
 that it is still standing in their names, as follows [*state as
 in Form P.*]:—

That the said _____ is absent from Great
 Britain [*or Ireland*] [*or, became bankrupt, etc., as in Form
 P.*]

That on the _____ day of _____, 189____, the said
 _____ was removed from his office of trustee,
 and _____ was appointed in his place.

That since such removal application has been made in
 writing to the said _____ to join in the
 transfer of the said Stock into the names of the said
 _____ as trustees for the said Trade Union, but he
 has refused to comply [*or has not complied*] with such
 application. [*This paragraph may be omitted, or varied, as
 the facts require.*]

And I make this solemn declaration, conscientiously
 believing the same to be true, and by virtue of the pro-
 visions of an Act made and passed in the fifth and sixth
 years of the reign of His late Majesty King William the

Fourth, intituled “ An Act to repeal an Act of the present
 “ Session of Parliament, intituled ‘ An Act for the more
 “ ‘ effectual Abolition of Oaths and Affirmations taken and
 “ ‘ made in various Departments of the State, and to sub-
 “ ‘ stitute Declarations in lieu thereof, and for the more
 “ ‘ entire Suppression of voluntary and extra-judicial Oaths
 “ ‘ and Affidavits, and to make other Provisions for the
 “ ‘ Abolition of unnecessary Oaths.’ ”

Taken and received before me, one
 of Her Majesty’s justices of the
 peace for the said county of _____,
 at _____, in the said county,
 this _____ day of _____ 189 _____.

FORM R.—Reg. 20.

Direction by the Registrar to transfer Stock.

Whereas it has been made to appear to the Registrar
 that _____ Stock, transferable at the Bank of England
 [or Ireland] is now standing in the names of _____
 and _____, as trustees
 of _____ Trade Union registered under the above-
 mentioned Acts.

This form
 applies
 (with the
 necessary
 modifica-
 tions) to a
 branch of
 a trade
 union.

And that the said _____ is absent from
 Great Britain [or Ireland, or became bankrupt, etc., as in
 Form P.]

And that _____ has been appointed trustee
 of the said Trade Union in place of the said _____.

* (a.) The Registrar under the said Acts hereby directs,
 pursuant to section 4 of the 39 & 40 Vict. c. 22, that the
 said sum of _____ so standing in the books of the
 Governor and Company of the Bank of England [or
 Ireland] in the names of the said _____
 transferred in the said books by the said _____
 into the names of the said _____.

* The
 paragraphs
 marked (a)
 or (b) will
 be used as
 the case re-
 quires.

(b.) And that there is no surviving or continuing trustee
 of the said Trade Union, or that the surviving or continuing
 trustee or trustees refuse or are unable to transfer the said
 Stock.

The Registrar under the said Acts hereby directs, pursuant to section 4 of the 39 & 40 Vict. c. 22, that the said sum of _____ so standing in the books of the Governor and Company of the Bank of England [or Ireland] be transferred in the said books by the Accountant General, or Deputy or Assistant Accountant General, of the said Bank into the names of the said _____.

Address _____

Date _____, 189 ____.

[Seal of Central Office, and signature of Chief Registrar for England, or signature of Assistant Registrar for Scotland or Ireland.]

FORM S.—Reg. 21.

Notice of Dissolution.

* Name of trade union.	* To the Central Office, 28, Abingdon Street, Westminster [or To the Assistant Registrar for Scotland or for Ireland, <i>as the case may require</i>].	Trade Union. Register No.
------------------------------	---	--------------------------------

Notice is hereby given that the above-mentioned Trade Union was dissolved in pursuance of the rules thereof on the _____ day of _____.

1.	Secretary.
2.	Member.
3.	Member.
4.	Member.
5.	Member.
6.	Member.
7.	Member.
8.	Member.

Name and address to
which registered copy }
is to be returned.

Date _____, 189 ____.

FORM T.—Reg. 22.

Notice of Amalgamation of Trade Unions.

(A.)*	Trade Union.	Register No.	.	* Name
(B.)*	Trade Union.	Register No.	.	of trade
				union.

[and so on if more than two].

To the Central Office, 28, Abingdon Street,
Westminster.

Notice is hereby given, that by the consent of two-thirds of the whole number of members of each or every of the above-mentioned Trade Unions they have resolved to become amalgamated together as one Trade Union.

And the following are the terms of the said amalgamation [*state the terms*]:—

And that it is intended that the Trade Union shall henceforth be called the*

Accompanying this notice is a copy of the Rules intended to be henceforth adopted by the amalgamated Trade Union [which are the Rules of the* Trade Union].

[To be signed by seven
Members and the Secre-
tary of each Trade Union.]

Name and address to
which registered copy
is to be sent. }

Date , 189 .

FORM U.—Reg. 22.

*Declaration in support of Amalgamation, to be made by the
Secretary of each Trade Union amalgamating.*

*	Trade Union.	Register No.	.	* Name
I,	, of			of trade
				union.

the secretary of the above-mentioned Trade Union, do solemnly and sincerely declare that in the amalgamation

of the said Trade Union with the _____, notice of which is appended to this declaration, the provisions of the Trade Union Act Amendment Act, 1876, in respect of amalgamations, have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Taken and received before me, one of Her Majesty's justices of the peace for the said county of _____, at _____, in the said county, this _____ day of _____, 189 _____.	}	Signature of Declarant.
--	---	-------------------------

NOTE.—All the preceding Forms are kept in stock, except H., I., K., L., and R.; those five are written out as required to suit the circumstances in each case.

TRADE UNION ACTS, 1871 AND 1876. T. U. No. 1.

ANNUAL RETURN AS PRESCRIBED BY THE REGISTRAR.

RETURN REQUIRED FROM A REGISTERED TRADE UNION,
Year ending 31st December, 189 .

[*The Trade Union's Balance-Sheet cannot be accepted as a
substitute for this Return.*]

This Return is to be sent to the Registrar before the
following 1st of June.

A Copy of the Auditors' Report, if any, should also be
sent, together with a Copy of the Printed Statement of
Accounts.

Name of Trade Union	.	
Register No.	.	
Date of commencement of Trade Union		18 .
When first Registered	.	
Date of Registration of last Alteration of Rules		18 .
Names of the present Trustees		.
Name and Address of the Treasurer,	}	
and of any other Officer in receipt		
or charge of money		
Amount of Security given by him or them, £		.
State what provision, if any, is made for old age		.
The Audit for the Year has been conducted by Mr.		
	, of	, whose calling
or profession is		, and Mr.
of		, whose calling or profession is
		, who were appointed Auditors by
		, under the authority of Rule No. .
Registered Office of the Trade Union*		
in the County of	.	
Date	189 .	

* State full
postal ad-
dress.

In filling up the Form of Annual Return, particular
attention should be given to the following observations:—

- 1.—RECEIPTS AND EXPENDITURE.—It must be carefully
remembered that this is not a mere Cash Account,

giving particulars of cash received and cash expended. Accordingly such items as—

(a) Cash withdrawn from Bank, or cash paid into Bank;

(b) Cash expended in purchase of investments, or cash received on sale of investments, or on discharge of mortgages, etc. etc.,

must not appear, beyond entering as a profit or loss, as the case may be, the difference between the amount received and the amount at which the assets previously stood in the Trade Union's balance-sheets.

2.—Interest on the funds which has become due and payable in the course of the year should appear as a receipt; and if not actually paid at end of year, will appear in the assets of the balance-sheet as interest due and unpaid.

3.—Where, under the rules, separate funds are required to be kept for the various benefits, the amounts of these various funds should always be stated separately in the balance-sheet. *The total amount of funds should agree with that stated under Receipts and Expenditure Account.*

4.—Where any particular fund has no assets, but is indebted for the time being to other funds, the amount of such indebtedness, clearly described, must appear under "Other Assets"; and where a deficiency in any fund exists both at the beginning and end of the year, the amount of such deficiency at the beginning of the year must be stated below the item "Amount of Funds at end of the Year as per Balance-Sheet," and the amount of such deficiency at the end of the year below the item "Amount of Funds at the beginning of the Year."

5.—The amount of funds brought forward at beginning of year must agree with the amount of funds at close of the previous year.

6.—Whatever the rules may provide as to date of Annual Meetings and Annual Accounts, the Annual Return required, under the Act, to be

made out and sent to the Registrar must always be made up for the year ending 31st December.

- 7.—The amount of contributions received in the course of the year in respect of any particular fund, should be so entered as to include contributions remaining unpaid at 31st December, but not in arrear to the extent of forfeiture of membership; and this latter should appear as “Contributions in Arrear” among the assets of the balance-sheet, and would consequently not be included in the item “Contributions” for the next year.
- 8.—The Annual Return should be signed by the Auditors appointed under the rules.
- 9.—The Trade Union should in all its Returns and communications to the Registrar state its registered name and number. These will be found on the envelope enclosing the Form of Return. If, on comparison, any discrepancy is found, the Registrar should be informed without delay.
- 10.—The Signatures of all officers required to sign the Return must be in their own handwriting.
- 11.—If the Registered Office has been changed since the last Return, and the change not notified to the Registrar, the Secretary should apply for Form M. forthwith. On the dissolution of a Trade Union, Form S. is required to be filled up in duplicate.

N.B.—With this Annual Return must be sent to the Registrar:—

- (1) A Copy of the rules of the Trade Union as they exist at date to which this Return is made out.
- (2) A Copy of all alterations of rules and new rules made by the Trade Union during the year preceding the date up to which this Return is made out.

[For particulars as to changes of officers see fourth page of this Return.]

GENERAL STATEMENT of the Receipts and Expenditure, Funds and Effects, of the TRADE UNION, from 1st January to 31st December, 189 .

Rs.

GENERAL ACCOUNT.

Cr.

RECEIPTS.		£	s.	d.	EXPENDITURE.		£	s.	d.
To Fines				By Sickness Pay				
Entrance Fees				Superannuation Pay				
Levies				Sums paid at death of Members				
Contributions Paid by Members				Accident benefit				
(Here set forth each of the objects of the Trade				Medical aid (including Salary				
Union severally, and where separate contribu-				of Surgeon)				
tions are paid for the various objects these				Allowance to Members seeking				
should be separately stated.)				employment				
					Other benefits (specify them)				*
Interest received or accrued during the year					Strike Pay to Members				
on the Funds invested					Lock-out Pay to Members				
Contributions paid by Members for Expenses					Other payments (specify them)				
of Management					to Members				
Emblems, Rules, Cards, etc., sold					Contribution to other Trade				
Contributions from other Trade Unions					Unions				*
Other Receipts (specify them)					Legal charges				
					Salaries of Paid Officers (specify				
					them)				
					Rent				
					Stationery and Printing, Post-				
					age, etc.				
					Other expenses of Management				
					(specify them)				*
Total Receipts					Total Expenditure				
Amount of Funds at the beginning of					Amount of Funds at end of the year				
the year					(31st December, 189), as per Balance-				
					sheet (see below, A)				
TOTAL					TOTAL				

* Carry the total of inner column into outer column.

To Amount of the several Funds, viz. :— (Here set forth separately the amount of each of the Funds for Benefits.)		£	s.	d.
Amount of Management Fund				
Total Amount of Benefit and Management Funds as shewn in General Account (see above, A)				
Debts (if any) legally incurred by Trustees on behalf of the Trade Union (a) . .				
Cash due to Treasurer (if any)				
Other Liabilities (b)				
TOTAL				
By Investments :—				
1. In the interest at	Savings Bank, yielding per cent.			
2. In the Public Funds (c)				
3. Upon Government Securities in Great Britain or Ireland, yielding interest at per cent.				
4. Upon Real Securities in Great Britain or Ireland, yielding interest at an average of per cent.				
5. In the purchase of land				
6. In the erection of offices and buildings . .				
7. In (d)				
Cash in the Post Office Savings Bank . . .				
Cash in hand (e)				
Other assets (if any) (f)				
TOTAL				

Residing at
Residing at
Residing at

Trustees.

Number of Members at the beginning of the year . . .
Number of Members admitted during the year . . .
Number of Members left during the year from whatever cause Together . . .
Total Number of Members at 31st December, 189 . . .

Signature of Secretary

Residing at*

The undersigned, having had access to all the books and accounts of the Trade Union, and having examined the foregoing General Statement, and verified the same with the accounts and vouchers relating thereto, now sign the same as found to be correct, duly vouched, and in accordance with law.

Residing at
Residing at

Auditors.

Date

189 .

If in any respect these accounts are incorrect, unvouched, or not in accordance with law, the Auditors are not to sign as above, but are to make a Special Report to the Trade Union, of which a copy is to be sent to the Registrar with this Statement.

(a) Specify their nature. (b) Specify them. (c) State amount and description of Stock. (d) If on other Securities state them separately. (e) State in whose hands. (f) Specify them. * Give postal address.

T. U. No. 2.

Reg. No.

Name of Trade Union

TRADE UNION ACTS, 1871 AND 1876.

Annual Return of Change of Officers during the Year ending
31st December, 189 .

Date of Change.	Title of Officer.	Name of Officer retiring.	Cause of Retirement.	Name of Officer appointed.	Address.

} Signatures
of
Trustees.

CHAPTER X.

THE TRADE UNION (PROVIDENT FUNDS) ACT, 1893.

THE object of this short Act, the 56 Vict. c. 2, was to place trade unions, having provision in their rules for provident benefits similar to those of a friendly society, on the same basis as friendly societies as regards exemption from income tax, under the Income Tax Acts. As I prepared the Bill, and got it through Parliament, I may explain that it would have been impossible to do so if its provisions had not been limited to provident funds. In this respect the Act as regards exemption is on the same lines as in the case of friendly societies.

The exemption is limited to registered unions for the same reason, the exemption in the other case being so limited. But this is not a disability, for a registered union has advantages under the Trade Union Acts, 1871 and 1876, which are not enjoyed by an unregistered union. The advantages of registration are manifold.

The exemption is restricted to the invested funds of the union, because its income from subscriptions is not subject to income tax any more than the income of a friendly society or charitable institution.

The term "provident benefits" is for the first time defined by this Act. Such a definition was found to be necessary by reason of the fact that disputes had arisen as to trade unions investing their funds in the savings banks, under the Savings Banks Acts, some having been refused the privilege of so investing, except on the same terms as a private individual. The definition covers all provident benefits of whatever kind provided for in the rules of trade unions. Thus the investments of such unions as the Amalgamated Society of Engineers, Carpenters and Joiners, Tailors, Ironfounders, Moulders, Blacksmiths, Boilermakers and Iron Shipbuilders, Railway Servants, and others of a like class will be exempt, as will also those which only pay partial benefits, such as funeral benefit. But a society having no provident benefits whatever is not included, and registration is essential, in all cases, in order to come within the provisions of the Act.

"Exemption" must be claimed, as in the case of friendly societies, industrial and provident societies, and the like; and as the Act covers all interest and dividends payable on balance in the bank, on shares and stock, notice of exemption should be given to the bank, corporation or company, that it is the intention of the society to claim exemption from income tax under the Act. If the Inland Revenue Commissioners insist upon an account, the proportion of provident benefits to strike pay during the three preceding years will in most instances be sufficient to indicate the amount upon which income tax is payable, if demanded.

The Boilermakers and Iron Shipbuilders' Society

claimed under this Act in 1894, and the Government refunded the amount of £77 11s. 5d. on their investments from April 1st, 1893, to March 31st, 1894, in various securities, and also the income tax payable on their new offices at Newcastle-on-Tyne.

TRADE UNION (PROVIDENT FUNDS) ACT, 1893.

[56 VICT., CH. 2.]

An Act to exempt from income tax the invested funds of trade unions applied in payment of provident benefits. [March 28th, 1893.]

Be it enacted as follows:—

- (1.) A trade union duly registered under the Trade Union Acts, 1871 and 1876, shall be entitled to exemption from income tax chargeable under Schedules A, C., and D., of any Acts for granting duties of income tax in respect of the interest and dividends of the trade union applicable and applied solely for the purpose of provident benefits.
- Provident funds of trade unions to be exempt from income tax, 33 & 34 Vict. c. 31, 39 & 40 Vict. c. 22.

Provided always that the exemption shall not extend to any trade union by the rules of which the amount assured to any member, or person nominated by or claiming under him, shall exceed the total sum of two hundred pounds, or the amount of any annuity granted to any member or person nominated by him, shall exceed the sum of thirty pounds per annum.

- (2.) The exemption shall be claimed and allowed in the same manner as is prescribed by law in the case of income applicable and applied for charitable purposes.
- Mode of claiming exemption.

- (3.) In this Act the expression “provident benefits” means and includes any payment made to a member during sickness or incapacity from personal injury, or while out of work; or to an aged member by way of superannuation; or to a member who has met with an accident, or has lost
- Definition of “provident benefits.”

his tools by fire or theft ; or a payment in discharge or aid of funeral expenses on the death of a member or wife of a member, or as provision for the children of the deceased member, where the payment in respect whereof exemption is claimed is a payment expressly authorised by the registered rules of the trade union claiming the exemption.

Short
title.

- (4.) This Act may be cited as the Trade Union (Provident Funds) Act, 1893.

CHAPTER XI.

LARCENY AND EMBEZZLEMENT.

[31 & 32 VICT., CH. 116.]

THIS Act, commonly known as the Recorder's Act, or Russell Gurney's Act, is frequently referred to, and is sometimes put in force, in connection with trade unions, because, under its provisions, apart from the Trade Union Act, it gives security to the funds, and other property, of trade unions, inas-
much as the officers and members of these unions can be prosecuted and punished for embezzling or stealing the funds, or other property, belonging to the society of which they are co-partners.

The Recorder's Act.

Protection of property of trade unions.

The Act is a good and useful one, and should be more generally understood ; but it must always be remembered that it is a Criminal Act, and consequently that there is no provision for fine in lieu of imprisonment, or for the restoration of the funds or other property as in the Trade Union Act, 1871.

It is a criminal Act,—not to be invoked except in cases of actual fraud.

The provisions of this Act cannot be invoked except in cases where there has been actual fraud.

31 & 32 VICT., CH. 116.

An Act to Amend the Law relating to Larceny and Embezzlement.

[31st July, 1868.]

Whereas it is expedient to provide for the better Security of the Property of Co-partnerships and other

joint beneficial Owners* against Offences by Part Owners thereof, and further to amend the Law relating to Embezzlement : Be it enacted as follows :

Member of co-partnership guilty of converting to his own use, etc., property of co-partnership liable to be tried as if not such member.

1. If any Person, being a Member of any Co-partnership, or being One of Two or more beneficial Owners of any Money, Goods, or Effects, Bills, Notes, Securities, or other Property, shall steal or embezzle any such Money, Goods, or Effects, Bills, Notes, Securities, or other Property, of or belonging to any such Co-partnership or to such joint beneficial Owners, every such Person shall be liable to be dealt with, tried, convicted, and punished for the same as if such Person had not been or was not a Member of such Co-partnership or One of such beneficial Owners.

Provisions of 18 & 19 Vict. c. 126, extended to embezzlement by clerks or servants.

2. All the Provisions of the Act passed in the Session of Parliament held in the Eighteenth and Nineteenth Years of Her present Majesty's Reign, intituled *An Act for diminishing Expense and Delay in the Administration of Criminal Justice in certain Cases*, shall extend and be applicable to the Offence of Embezzlement by Clerks or Servants, or Persons employed for the Purpose or in the Capacity of Clerks or Servants, and the said Act shall henceforth be read as if the said Offence of Embezzlement had been included therein.

Extent of Act.

3. This Act shall not extend to *Scotland*.

Proceedings under this Act must be taken in the district where the offence is committed.

Cases under the Recorder's Act are not numerous, for the reason, perhaps, that the funds and property of registered trade unions are fully protected under the Trade Union Acts, 1871 and 1876. Moreover, under the Trade Union Acts, the court may order the restoration of the money in full, either in one sum or by instalments, as the court may see fit, and may impose a fine not exceeding

* See the Trade Union Act, 1871, s. 4, pages 63 and 96, as to joint ownership of the property of a trade union.

£20, and costs not exceeding 20s., with the alternative of imprisonment, with or without hard labour, for any term not exceeding three months, in default of not complying with the order of the court.

Unregistered trade unions are not so protected, but they may proceed by indictment under this Act for stealing or embezzlement. The following cases may be cited, in the event of exception being taken to proceedings under this Act.

(1.) Friendly Society (Trade Union in this case) Illegality—Embezzlement—Right to the Protection of the Criminal Law.

S., an officer of a friendly society (trade union) some of whose rules were in restraint of trade,* embezzled their money:—Held that rules in restraint of trade are not criminal, although they may be void as being against public policy, and that societies having such rules are entitled to the protection of the criminal law for their funds, and, consequently, that S. might be properly convicted of embezzlement. (*The Queen v. Stainer*, 1 C. C. 230.)

(2.) *Regina v. Blackburn*.—This was the first prosecution under the Act, the only hitch in the case being as to whether the embezzlement took place before the Act was passed. This technical objection being settled, the case

* The doctrine of restraint of trade was laid down and applied by Lord Chief Justice Cockburn in the case of *Hornby v. Close*. In the case of an officer of a society at Bradford the justices dismissed the information on those grounds (*Law Reports*, 2 Q. B. 153). Held by Cockburn, C.J., and Mellor, J., that the justices were right. In a second case, *Farrer v. Close*, held by Hannen and Hayes, J.J., that strikes were not necessarily illegal, and that there was nothing in the evidence to show that the funds of the society had ever been applied to the support of illegal strikes; that no obligations in restraint of trade were imposed by the rules; that the society was not shown to be established for an illegal purpose; and that the decision of the justices was wrong. (4 Q. B. 602.)

proceeded. William Blackburn, bricklayer, was charged at the Worship Street Police Court with having embezzled £17 3s., belonging to No. 3 Branch of the Operative Bricklayers' Society, of which he was treasurer. Joseph Derry prosecuted as trustee on behalf of the society. Evidence having been given of the issue and service of warrant, and of prisoner's arrest, and also as to the fact of embezzlement and the circumstances of the case, the prisoner admitted the offence, and offered to repay the money, which could not be done under the Act. He was therefore committed to take his trial at the Old Bailey. On December 17th, 1868, the prisoner was indicted at the Central Criminal Court for feloniously stealing the money of the society, he being one of the joint beneficial owners. Mr. Besley (instructed by Messrs. Shaen and Roscoe) prosecuted. Counsel having stated the facts of the case, quoted the Act under which the prosecution took place, and called witnesses in support, the prisoner was found guilty, and sentenced to be imprisoned and kept to hard labour for six calendar months.

(3.) At Ilkeston Petty Sessions on January 26th, 1894, Charles Stretch was charged with stealing £25 5s. 11d., the moneys of the Ilkeston and District Hosiery Union, he being a member of the co-partnership in question, as joint and beneficial owner.—Mr. Hincks, of Leicester, who prosecuted, stated that defendant was treasurer to the Heanor Branch of the association, and received £2 a year for his services. His duty was to receive the moneys collected by the collectors, and to account for them to Mr. Bassford, the general secretary of the society. The proceedings were taken under Russell Gurney's Act, before the passing of which there was some difficulty in prosecuting a member of a partnership body for stealing moneys belonging to the partnership. This man was in the dual capacity of member of the society, and in that he was the paid treasurer of the society, he was also a servant.* There was nothing illegal in the rules, so that although it

* See § 2 of the Act. The offender can be charged in both capacities, as co-partner, and clerk or servant, if the prosecution think fit.

was an unregistered society it was not an illegal society. Its objects were "To raise funds to maintain an equitable remuneration for the labour of its members, and in case of need for legal assistance, and otherwise contribute to their social improvement."—Mr. Cattle raised a technical objection to the prosecution on the ground that the society was not one for gain, and that it had been decided in the case of *Regina v. Robson* (1885), by Chief Justice Coleridge, that there was no co-partnership, and there could not be a conviction.—Cases having been cited, the Bench decided to go on with the case.—Harry Bassford deposed that he was secretary of the Union, and prisoner was treasurer of the Heanor branch. It was part of the prisoner's duty to receive the moneys of the society, and account to witness periodically. The book produced was handed to witness by prisoner's wife on 1st January. The entries, showing that £25 5s. 11d. was due to the society, were in prisoner's handwriting. Prisoner was paid £2 a year for his services, and should send in an account once a month. The last account was delivered at the end of November or the beginning of December.—By the Mayor: He kept a certain amount of money in hand in order to make any necessary payments.—William Shipley said that he was the collector of the Heanor branch, and had paid moneys to the prisoner.—Inspector Swanwick stated that he received prisoner into custody, and charged him with stealing the amount mentioned; to which prisoner replied, "Yes; I know all about it. I shall plead guilty, but I don't think I've had as much as is stated on the warrant." He had taken the money a pound or two at a time.—Mr. Cattle withdrew his objection, in order that the Bench might deal with the case summarily, and the prisoner pleaded guilty.—Mr. Cattle pleaded for a lenient sentence on the ground that prisoner had lost his wife, and that during her illness he got into the hands of money-lenders to provide her with necessaries, and when she died the money-lenders came down upon him and sold him up. He had eight children, and it was a great temptation to him to use the money.—The Mayor said they were sorry to see a working man, who had hitherto borne a good character, in that position. The offence

was a serious one, as he had been robbing his fellow workmen. The least they could do was to send him to prison for two months. The section of the Act (from the "Handy-Book of the Labour Laws") under which Charles Stretch was convicted was quoted by the prosecution.—Extract from the Annual Report of the National Hosiery Federation, 1894.

CHAPTER XII.

FALSIFICATION OF ACCOUNTS ACT, 1875.

[38 & 39 VICT., CH. 24.]

ANOTHER Act which is often found useful in prosecuting dishonest officers of societies is the above, which enacts :

“ 1. That if any clerk, officer, or servant, or any person employed or acting in the capacity of a clerk, officer, or servant, shall wilfully and with intent to defraud destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or shall wilfully and with intent to defraud make or concur in making any false entry in, or omit or alter, or concur in omitting or altering, any material particular from or in any such book, or any document or account, then in every such case the person so offending shall be guilty of a misdemeanour, and be liable to be kept in penal servitude for a term not exceeding seven years, or to be imprisoned with or without hard labour for any term not exceeding two years.

“2. It shall be sufficient in any indictment under this Act to allege a general intent to defraud, without naming any particular person intended to be defrauded.” *

* As the officers of trade unions are paid officers, the provisions of the above Act should be borne in mind in the event of a prosecution where the society is not registered under the Trade Union Acts, 1871 and 1876.

CHAPTER XIII.

EMPLOYERS' LIABILITY ACT, 1880.

IT was generally thought, when the question of Employers' Liability for injuries to their servants or employés, sustained by them in the course of their employment, was before Parliament, that the amendment of the law as proposed would entail ruin upon the employing class ; and that, therefore, not only was it inexpedient to so amend the law as to augment their liability and increase their responsibility, but that any such enactment would have the effect of defeating its own ends, by reason of the stringency of its provisions. The House of Lords, representing in an intensified form all the timidity of the capitalist class, made the Act temporary, by restricting its operation to a period of seven years. Since 1887 the Act has been continued by the Expiring Laws Continuance Act. The Act has now been in force sufficiently long to judge of its effects ; on the whole it has worked without serious friction, and the strain has not been excessive on the capitalists of the country. Cases of individual hardship may have occurred, but they have not been many, though oftener to workmen than to

employers; and we very much question whether even employers would care to make any decided effort to repeal the law, though they may object to its amendment.

The agitation in favour of extending the liability of employers in the event of injury to their workpeople, during their employment, was first commenced by the miners, and was carried on at their expense up to the year 1869 or 1870; the late member for Stafford—Mr. Alexander Macdonald—being their trusted representative in this and other matters. When the Parliamentary Committee of the Trades' Union Congress was constituted, the duties formerly undertaken solely by the miners' representatives, devolved upon that Committee, and they at once proceeded with their task. A Bill was drafted and introduced into Parliament, based upon a Bill previously prepared by the National Association of Miners, which measure was drafted by Mr. R. S. (now Mr. Justice) Wright; Mr. Walter Morrison, Mr. J. Hinde Palmer, and Mr. Andrew Johnstone taking charge of it in the House of Commons. On the proposal that it be read a second time—August 7th, 1872—the then President of the Board of Trade, Mr. Chichester Fortescue, afterwards Lord Carlingford, promised that the Government would introduce a measure, having similar objects, during the then next session, 1873. That promise was not redeemed, and the agitation continued without intermission until the final passing of the Act of 1880.

Apparently, prior to 1837, the liability of employers, in cases of injury to their workpeople, was precisely the same as to other persons not in

their employment: that is to say, it was based upon, and only limited by, the accepted principles of the Common Law. (1.) That a person guilty of negligence is liable to make good pecuniary damage resulting therefrom to another, provided that such damage can with sufficient directness be traced to the negligence. (2.) That a person who commits a wrongful act by means of another is liable for its consequences—subject to the same qualification as above. These maxims seem to cover the case of a workman injured in the course of his employment, whether through the negligence of the employer, his agent, or a fellow-workman. In the case of *Priestly v. Fowler*, in the year 1837, it was given in evidence that the van causing the injury was in charge of a fellow-servant, to whose negligence the overloading was attributable, and it was held, expressly upon this ground, that the servant injured could not recover compensation from his master. This seems to have been the first reported case of the kind, and gave rise to the doctrine of common employment, namely that if the person occasioning and the person suffering the injury are fellow-workmen engaged in a common employment, the employer is not responsible. Therefore for any injury caused to a workman at the hands of a fellow-workman, there was, as a general rule, no remedy against the common employer.* This doctrine of common employment ruled up to Lord Campbell's Act in 1846, and was accepted by the Courts thereafter in cases tried under that Act.

* Employers' Liability Act, 1880, by A. H. Ruegg, Barrister-at-Law, Cap. I., pages 4 and 5.

Lord Campbell's Act, 9 & 10 Vict. c. 93, was no doubt intended by its author to cover certain cases of the kind provided for in the several Bills, subsequently introduced from time to time into the House of Commons, and ultimately secured by the Employers' Liability Act, but its provisions were limited to persons killed by accidents. However, the entire object of that earlier measure, in so far as employés were concerned, was frustrated by the "doctrine of common employment," as laid down by the Judges in several important actions. One of these cases was fought very stubbornly by the miners, namely, *The Bartonshill Coal Company v. Reid*, in 1858; but though the action lay in Scotland, where the doctrine of common employment was until then unknown, certainly not legally recognised, the House of Lords reversed the verdict of the Scotch Courts, and gave its decision in favour of the employers—the defendants in the action. It is needless to pursue the inquiry into the various decisions given, both before and subsequent to the one mentioned, as they more properly belong to the domain of technical law, and are of interest mainly to the legal profession.

These pages are not intended for lawyers; they are prepared with the view of assisting workmen to understand the law, as it stands; and of enabling them to take full advantage of an Act passed in their interest, and for their special benefit. Nevertheless, the object of the writer is not to promote litigation. Our advice is never to go to law if you can obtain fair and reasonable compensation by any other means. The costs, even to a

successful litigant, often absorb nearly the whole of the damages given; for the taxed costs allowed never cover the charges as between lawyers and their clients. Often the costs do not amount to more than one-half, the other moiety having to be paid by the party winning the case. We will suppose a case, to illustrate our meaning. John Jones, bricklayer, sues Messrs. Brown and Co., a firm of builders, for injuries caused by the falling of a scaffold, through the alleged neglect of the scaffolder, or by reason of defective materials employed in its construction. He sues for full damages, £300, being three years' wages, as allowed by the Act. The case is tried in a county court; damages are awarded amounting to £250. An appeal is lodged; the case is carried to the higher courts. After a long interval, and much expense, the decision is in favour of the plaintiff for the full amount claimed, with costs. Eminent counsel have been employed to defend the firm, therefore eminent counsel must be employed by the plaintiff to meet the talent provided on the other side. The costs, including counsel, may amount to £150, or even £200, according to the issues raised, the time and labour expended, the character of the firm of solicitors, and the high standing of counsel. The defendants determine to contest, before the taxing master, every item of the law charges made by the plaintiff's solicitor. These charges are cut down to the lowest possible amount allowable in such cases. The result may be that of the £150 or £200 charged, £50 or £75 may be confirmed; the plaintiff having to pay the remainder, out of the compensation awarded. His balance, he will find,

will be materially reduced by such a process. There may be cases in which the whole amount will be swallowed up, even when the decision is favourable to the plaintiff. Where the case is dismissed by the court, or the decision is reversed on appeal, the consequences may be absolutely ruinous.

Nor is litigation more desirable for the employer. The costs in defending an action may amount to more than the entire sum demanded as compensation. If he is successful he has the satisfaction of paying the lawyer, instead of the workman's claims ; but this must be a poor satisfaction in any case. Many employers shift this responsibility of resisting claims on to the shoulders of Insurance Corporations; and it is known that companies have no consciences. We deprecate this mode of resisting all claims, just as we should deprecate the action of Trade Unions, were they to determine to bring all kinds of frivolous actions for the purpose of harassing employers. Frivolous actions and vexatious law proceedings, for the purpose of defeating the objects of the Act, are both to be condemned. Mutual forbearance, and kindly concession, are not only desirable, but this mode of dealing with what after all is a disaster, however caused, is always preferable, because it is the most humane method, when human suffering and privation is in question.

There is one aspect of the case which has caused, and is causing, heartburnings and disaffection, though we hope that it is only an extremely small minority who are ever likely to misuse the provisions of the Act, in the manner now to be mentioned. The fourth section of the Act provides

that notice of the injury sustained must be given within six weeks of the occurrence. It appears that instances have occurred in which the employer has taken care to keep the injured person and his relatives quiet, by payment of wages or gifts, until the time of notice has expired, when such allowance is discontinued, and the injured man and his family are left to their own resources, and to the uncertainties of the law. When an action is commenced it is pleaded that the time for giving the required notice has expired. The plea, if a true one, is, it appears, maintainable; and the plaintiff is deprived of what ought to be a rightful claim. In such a case, we hold that the defendant has practically admitted his liability, and contributed part payment; and that the fact of his having so acted should be no bar to legal remedy, but the reverse. As a matter of equity the employer ought only to be allowed the sum or sums so paid out of the compensation which, under other circumstances, would have been awarded, as being justly due to the person injured, or to his family in case of death. In the event of death, however, there is a provision to the effect that it is left to the Judge to say whether there was reasonable excuse for such want of notice.

However, we must take the Act as it is; and the rulings under it must be accepted, until they are reversed by the highest court in the land, or the provisions of the Act are amended. The Act says that notice of the injury must be given within six weeks, or, failing to do so, an action for the recovery of compensation for an injury shall not be maintainable. This is the law, and in order to meet its requirements notice should, in every case

of injury, be at once given,* whether or not it may be needful to commence an action subsequently. It is a very simple affair, and does not necessitate any threat of legal proceedings; but the notice must be accurate in all particulars necessary to be given; and it should not go beyond the bare statement of facts. The date when sent must be given at the top of the notice; the Christian and surname must be given in full; then must follow the correct address of the person claiming; the date of the accident; the place or premises where the injury occurred; and a brief statement of the cause of injury or accident. At the foot of such notice the person injured, or some one lawfully claiming on his behalf, must sign his name; then must follow the name and address of the employer, or firm, or that of the accredited officer of the company in whose employment he was at the time of the accident. The particulars in this form of notice is the most important step in the whole proceeding.

It is not absolutely necessary to employ a solicitor to commence an action in the County Court, where all such actions must be tried, unless special application be made, by either the plaintiff or the defendant, for its removal into a superior court. But it is unsafe for any workman to undertake by and for himself to bring an action. The first step, that of giving notice,* is easy enough; any man can do it unless his injuries are of such a character as to preclude the possibility of his writing the notice, or of even signing his name. But even this can be done on his behalf; and when completed it must either be sent by registered

* See Form 1.

letter to the employer, or it must be delivered by hand. (See § 7 of the Act, page 177.) The latter is the safer plan where practicable; but a registered letter is deemed to be sufficient.

The next step to be taken, should an action be commenced, is to deliver particulars of demand. "A form of particulars of demand" is supplied,* but workmen generally are scarcely well enough versed in law to fill in the necessary details. Professional aid must be sought, if the action is, or is likely to be, defended. All subsequent steps require professional assistance. One caution may be necessary—never put in an exorbitant claim. Some persons entertain the notion that the best plan is to claim large compensation, and leave it to the court to cut it down. This method is neither prudent nor honest. The claim should be for a reasonable amount, taking all the facts and circumstances fairly into consideration. An exorbitant claim is, and rightly, regarded as an attempt at extortion, and both Judge and jury will view with suspicion every portion of the evidence tendered in support of such claim. When seeking professional aid or advice, never withhold any material fact from the knowledge of the solicitor employed; for the defendant's solicitor will elicit the full facts of the case, and any attempt at concealment will recoil on the head of the person claiming compensation.

The Act, where it applies, only gives to workmen the same rights as those enjoyed by the public before the Act was passed. For all practical purposes it may be said that the statute simply confers on the workman the same rights as were

* See Form 2.

previously secured to the general public, and no more. The doctrine of common employment is abolished, but the same safeguards are preserved to the employer as heretofore, where the person injured was a stranger. Consequently he can plead the same defences, and to the same degree as were available to him before the Act was passed; workmen are now on the same footing as strangers; whereas formerly they were at a disadvantage. If these facts are remembered, frivolous actions will not be commenced. A workman has no more right to harass an employer by vexatious litigation, than an employer has to cause injury to a workman by negligence, or defective appliances in materials, machinery, or plant.

The following brief summary of defences will show the operation of the Act, and the degree of responsibility resting upon an employer:—

1. A master is not liable for the wilful wrongdoing of his servant; he may therefore plead, that the act causing the injury was wilful on the part of the servant. But an action in this case is maintainable against the fellow-workman causing the injury.

2. If the injury was caused by a servant, while acting outside the scope of his legitimate employment, the master is held not to be responsible; he may, therefore, plead that the servant was not acting within the scope of his employment when the injury was occasioned.

3. If a master has taken all reasonable precautions to avert an accident, and has exercised due and proper care, prudence, foresight, and skill, in regard to the specific cause of injury, he is held

not to be liable; he may therefore plead that the injury was unavoidable. The mere omission of some possible precaution, suggested by after-events as having been possible, *could* the event itself have been foreseen, does not of itself render an employer responsible for the mishap. In such cases the accident is regarded as unavoidable. A proper understanding and due appreciation of this point may, and will, prevent vexatious law proceedings against an employer, and will save the pockets of the would-be litigant.

4. If a workman is injured by an accident while engaged in no duty towards his employer, or when he was at a place where he was not required to be, and had no business to be in the course of his employment, or was there to suit his own convenience, the employer may plead that the plaintiff was a trespasser, or that he was merely permitted to be at the place where the accident occurred. In such cases the injured person is placed in exactly the same position as a stranger.

5. An employer is expressly exonerated from responsibility if the injured person contributed to the injury by his own act and deed, and such acts and deeds were the proximate cause of the accident. The plea in this case is that the plaintiff was himself guilty of contributory negligence. This defence is a strong one, and is therefore frequently urged. It is consequently important that its bearings should be clearly understood. Contributory negligence may mean, either that the person injured did something which he was not required to do, and thereby caused the accident, or that he omitted to do something, by the doing of which the accident

could have been prevented. The plea in the latter case is that the person injured might have avoided the accident, and consequent injury, by the exercise of reasonable care. The two words which perhaps best express the legal bearing of this clause—Sub-section 3 of § 2 of the Act—are *wilful* negligence and *culpable* negligence. But the onus of proof lies with the defendant, and he must prove that the alleged contributory negligence was real, and that it occasioned, or materially contributed to, the accident causing the injury. But the mere omission to do something that might have prevented the accident, had it been foreseen, is not contributory negligence under the Act. In this respect the workman is placed upon a par with the employer who pleads that the accident was unavoidable. The plea of the claimant in this case will have the same weight and authority, and to the same degree as the plea of the defendant, namely, that he took all reasonable care. The rule in such cases, if rule there be, seems to be to this effect: that if the injury was *mainly* caused by the conduct of the plaintiff himself, he cannot recover. But it appears from decisions that have been given, that when the injured party has conduced to the accident in an equal degree with, or more than the defendant, the plaintiff cannot recover, though the defendant has himself been guilty of some negligence. Other decisions appear to establish this rule: That where the defendant's negligence has been the proximate or immediate cause of the injury, or has clearly conduced thereto in a greater degree than the plaintiff, he (the defendant) is responsible.

6. But the section referred to, § 2, Sub-section

3 of the Act, goes somewhat farther than the remarks in the preceding paragraph would seem to imply. It throws upon the workman the responsibility of giving notice of any defect likely to cause an accident, which he has observed in the machinery or plant, or of some negligence on the part of the employer, or his accredited agent, which may cause or contribute to an accident. Such notice must be given to the employer, or to some one in authority under him, with respect to the supposed negligence, or discovered defect, as the case may be. The notice may be written or oral. But if the defect was already known to the employer or to his agent, an omission on the part of the workman to call attention to it is no bar to legal remedy. The fact, however, of having given such notice is *primâ facie* evidence in the workman's favour.

The foregoing are some of the more material points in connection with the Employers' Liability Act, 1880, which workmen will do well to consider, ponder over, and strive to understand. No attempt is here made to deal with the mere technicalities of the law, or the nice distinctions drawn by experts in the course of its administration. Only experienced lawyers can conduct cases of litigation; and to these, or some one of them, a workman must go, if he intends to carry the case into court. The purpose here is to convey to workmen a clear perception of the objects and intentions of the Act, and to give them such preliminary information as will enable them to see whether the provisions of the Act do or may apply to their particular case. If they follow the hints herein given they will be saved a world of trouble, much expense, and no

little disappointment. Again let it be remembered that while taking the precaution to give notice in case legal action may be required to be taken, workmen must not rashly, and without proper advice, enter upon a course fraught with much uncertainty, unless there be good reasons for it, and some probability of success in the action.

THE COUNTY COURTS ACT, 1888.

[51 & 52 VICT., CH. 43.]

The County Courts Consolidation Act, 1888, contains no express provisions with respect to the Employers' Liability Act, 1880. The County Courts Act limits the jurisdiction of the Courts to amounts not exceeding £50, except in certain specified cases. The Employers' Liability Act, 1880, however, conferred upon County Courts jurisdiction under that Act by § 6, the limitation of amount fixed being "such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those three years in the like employment, and in the district in which the workman is employed at the time of the injury."

Under § 6, Sub-sections 2 and 3, of the Act of 1880, power is given to the County Court to appoint and remunerate assessors, consolidate actions, and make regulations, such Orders and Rules to regulate the practice and procedure under the Employers' Liability Act, 1880, in like manner as under the County Courts Act, 1888.

The County Court Rules relating specifically to the Employers' Liability Act are given *in extenso*, immediately after the text of the Act, and also such Forms as are needful for the understanding and appreciation of the Act, and the methods of procedure thereunder. The following is a general synopsis of the Rules, and of some of the more important Forms given in the Appendix to the Rules.

COUNTY COURT RULES, 1889.

1. *Service of Summons*.—A summons must be served on the defendant at least thirty clear days before the return day of such summons. In order to do this the summons must be delivered to the bailiff thirty-two clear days before the return thereof, if in the County Court district where it is to be tried, or thirty-five clear days if in another district.

2. The particulars of demand must be filed by plaintiff at the time of entry of the plaint, whatever the amount.

3. The particulars of demand must state in ordinary language the cause of the injury, date when sustained, and the amount of compensation claimed. If the action is brought by more than one plaintiff, the amount claimed by each ; and where the injury has arisen by any act or omission on the part of any person in the service of defendant, the name and description of such person must be given.

4. *Jury*.—Notice of demand for a jury must be given in writing to the registrar fifteen clear days at least before the return day, and the summonses to the intended jurors must be delivered to the bailiff forthwith.

6 to 17. *Assessors*.—A number of Rules are given, in more or less detail, with respect to the qualification, appointment, duties, remuneration, etc., of assessors. They are mostly technical in character, and are given in full further on, so that they need not be particularised here. Suffice it to say that they must be properly qualified; the demand for their appointment must be filed; an opposing party may file objections to any of the names proposed, or may propose other names, or may assent to those proposed; the Judge may appoint those named, or any of them, or may nominate and appoint other persons to act. The remuneration for each assessor is two guineas per day, and such expenses, if any, as the Judge may order. The person applying for the appointment of assessors must deposit the fees for each assessor proposed, unless the latter states in writing that no remuneration is required. The costs of assessors are to be considered as part costs of the action, unless the Judge orders otherwise.

18. Provides that where two or more persons are joined as plaintiffs, and the negligence, act, or omission which is the cause of action is proved, the judgment shall be for all the plaintiffs, and the sum awarded as damages, and costs ordered to be paid to each plaintiff, shall be found and set forth in the judgment, and the amount and costs be ordered to be paid in such manner as the Court shall think fit.

Order III., Rule 1, provides that all persons may be joined as plaintiffs in whom the right of any relief claim is alleged to exist, whether jointly, severally, or in the alternative; and judgment

may be given for one or more of the plaintiffs entitled to relief, for such portion as he may be entitled to.

19. Provides a remedy in case defendant fails to pay the compensation awarded, and the costs, which is by execution against his goods. If these are insufficient, the costs are deducted, and the residue is divided in proportion to the amount claimed and unsatisfied.

(For the full text of the Rules see pages 179—182.)

EMPLOYERS' LIABILITY ACT (1880).

[43 & 44 VICT., CH. 42.]

An Act to extend and regulate the Liability of Employers to make compensation for Personal Injuries suffered by Workmen in their service.

7th September, 1880.

Be it enacted as follows :

Amendment of Law.

1. Where after the commencement of this Act personal injury is caused to a workman,

(1.) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer ; or

(2.) By reason of the negligence of any person in the service of the employer who has any superintendence entrusted to him whilst in the exercise of such superintendence ; or

(3.) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed ;
or

(4.) By reason of the act or omission of any person in

the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf ; or

- (5.) By reason of the negligence of any person in the service of the employer who has the charge or control of any signals, points, locomotive engine, or train upon a railway, the workman, or in case the injury results in death, the legal representatives of the workman, and any persons entitled in case of death, shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of, nor in the service of the employer, nor engaged in his work.

Exceptions of Amendment of Law.

2. A workman shall not be entitled under this Act to any right of compensation or remedy against the employer in any of the following cases ; that is to say—

- (1.) Under Sub-section one of Section one, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.
- (2.) Under Sub-section four of Section one, unless the injury resulted from some impropriety or defect in the rules, bye-laws or instructions therein mentioned ; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's principal Secretaries of State, or by the Board of Trade or any other department of the Government, under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.
- (3.) In any case where the workman knew of the defect or negligence which caused his injury, and failed

within a reasonable time to give, or cause to be given, information thereof to the employer, or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

Limit of Sum Recoverable as Compensation.

3. The amount of compensation recoverable under this Act shall not exceed such sum as may be found to be equivalent to the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury.

Limit of Time for Recovery of Compensation.

4. An action for the recovery under this Act of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks, and the action is commenced within six months from the occurrence of the accident causing the injury, or, in case of death, within twelve months from the time of death; provided always, that in case of death the want of such notice shall be no bar to the maintenance of such action if the judge shall be of opinion that there was reasonable excuse for such want of notice.

Money Payable under Penalty to be Deducted from Compensation under Act.

5. There shall be deducted from any compensation awarded to any workman, or persons claiming by, under, or through a workman in respect of any cause of action arising under this Act, any penalty or part of a penalty which may have been paid in pursuance of any other Act of Parliament to such workman, representatives, or persons

in respect of the same cause of action ; and where an action has been brought under this Act by any workman or the representatives of any workman, or any persons claiming by, under, or through such workman, for compensation in respect of any cause of action arising under this Act, and payment has not previously been made of any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action, such workmen, representatives, or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Act of Parliament in respect of the same cause of action.

Trial of Actions.

6.—(1.) Every action for recovery of compensation under this Act shall be brought into a County Court, but may, upon the application of either plaintiff or defendant, be removed into a superior court in like manner and upon the same conditions as an action commenced in a County Court may by law be removed.

(2.) Upon the trial of any such action in a County Court before the Judge without a jury, one or more assessors may be appointed for the purpose of ascertaining the amount of compensation.

(3.) For the purpose of regulating the conditions and mode of appointment and remuneration of such assessors, and all matters of procedure relating to their duties, and also for the purpose of consolidating any actions under this Act in a County Court, and otherwise preventing multiplicity of such actions, rules and regulations may be made, varied, and repealed from time to time in the same manner as rules and regulations for regulating the practice and procedure in other actions in County Courts.

“County Court” shall, with respect to Scotland, mean the “Sheriff’s court,” and shall, with respect to Ireland, mean the “Civil Bill Court.”

In Scotland any action under this Act may be removed to the Court of Session at the instance of either party, in the manner provided by, and subject to the conditions

prescribed by, Section nine of the Sheriff Courts (Scotland) Act, 1877—40 & 41 Vict. c. 50.

In Scotland the sheriff may conjoin actions arising out of the same occurrence or cause of action, though at the instance of different parties, and in respect of different injuries.

Mode of Serving Notice of Injury.

7. Notice in respect of an injury under this Act shall give the name and address of the person injured, and shall state in ordinary language the cause of the injury and the date at which it was sustained, and shall be served on the employer, or, if there is more than one employer, upon one of such employers.

The notice may be served by delivering the same to or at any residence or place of business of the person on whom it is to be served.

The notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business ; and, if served by post, shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post ; and, in proving the service of such notice, it shall be sufficient to prove that the notice was properly addressed and registered.

Where the employer is a body of persons, corporate or unincorporate, the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office, or, if there be more than one office, any one of the offices of such body.

A notice under this section shall not be deemed invalid by reason of any defect or inaccuracy therein, unless the Judge who tried the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy, and that the defect or inaccuracy was for the purpose of misleading.

Definitions.

8. For the purposes of this Act, unless the context otherwise requires :—

The expression “person who has superintendence entrusted to him” means a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour :

The expression “employer” includes a body of persons corporate or unincorporate :

The expression “workman” means a railway servant and any person to whom the Employers and Workmen Act, 1875, applies—38 & 39 Vict. c. 90.

Commencement of Act.

9. This Act shall not come into operation until the first day of January, one thousand eight hundred and eighty-one, which date is in this Act referred to as the commencement of this Act.

Short Title.

10. This Act may be cited as the Employers' Liability Act, 1880, and shall continue in force till the thirty-first day of December, one thousand eight hundred and eighty-seven, and to the end of the then next session of Parliament, and no longer, unless Parliament shall otherwise determine, and all actions commenced under this Act before that period shall be continued as if the said Act had not expired.

The Act has been continued by the Expiring Laws Continuance Acts since 1887.

COUNTY COURT RULES, 1889, ORDER 44, AS AMENDED
IN 1892.

THE EMPLOYERS' LIABILITY ACT, 1880.

These Rules were made in 1889, and continue in force, except Rule 16, which is annulled, Rule 16A being substituted in lieu thereof (No. 152 in the Rules of 1893). The requisite Forms follow the Rules.

1. *Service of Summons*.—A summons in an action brought under the provisions of the Employers' Liability Act, 1880, where it is to be served in the home district, should, in order to ensure its service, be delivered to the bailiff thirty-two clear days at least, and when it is served in a foreign district, thirty-five clear days before the return day, but it shall in either case be served thirty clear days before the return day thereof.

Sum-
monses
when to be
served.
43 & 44
Vict. c. 42.

2. Particulars of demand shall be filed by the plaintiff at the time of the entry of the plaint, whatever the amount claimed may be, and a copy thereof shall be forthwith sent to the Judge.

Particulars
to be filed.

3. The particulars of demand shall state in ordinary language the cause of the injury, and the date at which it was sustained, and the amount of compensation claimed by each plaintiff, and where the injury of which the plaintiff complains shall have arisen by reason of the act or omission of any person in the service of the defendant, the particulars shall give the name and description of such person.

What the
particulars
of demand
shall state.

4. *Jury*.—Notice of a demand for a jury shall be in writing to the registrar of the Court fifteen clear days at least before the return day, and the summonses to the intended jurors shall be delivered to the bailiff forthwith.

Notice of
demand for
a jury.

5. *Assessors*.—Any person who shall, as hereinafter provided, be appointed by the Judge to act as an assessor in the action, shall be qualified so to act.

Qualifica-
tion of
assessors.

How
assessors
are to be
applied for.
Form 128.

6. Where no demand for a jury shall have been made, a party who desires assessors to be appointed shall, ten clear days at least before the return day, file an application according to the form in the Appendix, stating the number of assessors he proposes to be appointed, and the names, addresses, and occupations of the persons who may have expressed their willingness in writing to act as assessors. If the applicant has obtained the consent of the other party to the persons named being appointed, he shall file such consent with his application.

Where the
application
for assess-
sors is made
by one
party only,
it shall be
forwarded
to the other
party.

7. Where the application for the appointment of assessors has been made by only one party to an action, the registrar shall forward a copy of the application so made to the other party, who may then file an application for assessors, or file objections to one or more of the persons proposed.

Where both
parties
propose
assessors,
no objec-
tion to be
allowed to
persons
proposed.
Applica-
tion to be
forwarded
to the
Judge.

8. Where separate applications are filed by the parties, no objections to the persons proposed shall be made by either party, but the Judge may appoint from the persons named in each application one or more assessors, provided that the same number of assessors be appointed from the names given in such applications respectively.

9. The applications for the appointment of assessors, together with any objections made to the persons proposed, shall be forwarded by the registrar to the Judge.

If Judge
grant the
application
he shall
appoint
such of the
persons
proposed
as he shall
think fit.
The Judge,
whether
application
has or has
not been
made, may
appoint
assessors.

10. Where the Judge shall grant the application for the appointment of assessors, he shall appoint such of the persons proposed for the assessors as he may think fit, subject to the provisions contained in this Order (No. 44).

11. In any action where no demand for a jury has been made, and an application for the appointment of assessors has been filed, the Judge may either before or at the return day, nominate one or more additional persons to act as assessor or assessors in the action. Where no application for assessors has been made, the Judge may, if he think fit, appoint any one or more persons to act as assessors in the action before or at the return day.

12. If at the time and place appointed for the trial all or any of the assessors appointed shall not attend, the Judge may either proceed to try the action with the assistance of

such of the assessors, if any, as shall attend, or he may adjourn the trial generally, or upon any terms which he may think fit, or he may appoint any person who may be available and who is willing to act, and who is not objected to, or who if objected to is objected to on some insufficient ground, or the Judge may try the action without assessors if he shall think fit.

Where assessors fail to attend.

13. Every person nominated as an assessor shall receive for each day's attendance in every action the sum of two guineas, together with such further sum, if any, for his expenses as the Judge may order.

Remuneration of assessors.

14. Every person requiring the Judge to be assisted by assessors shall at the time of filing his application deposit with the registrar the sum of two guineas for each assessor proposed, and such payments shall be considered as costs in the action, unless otherwise ordered by the Judge. Provided that where a person proposed as an assessor shall have in writing informed the registrar that he does not require his remuneration to be so deposited, no deposit in respect of such person shall be required.

Deposit on application for assessors of amount of their remuneration.

15. Where an action shall be tried by the Judge with the assistance of any assessors in addition to, or independently of any assessors proposed by the parties, the remuneration of such assessors shall be borne by the parties, or either of them, as the Judge shall direct.

Remuneration of assessors not proposed by the parties, but appointed by the Judge.

16A. If after an assessor has been appointed, and before the day of trial, the registrar shall be satisfied that the action has been settled, or that the services of the assessor are not required, he shall forthwith countermand the attendance of such assessor, and pay to him one-half the fees paid for his attendance. The other half, less the cost of telegrams and postages, shall be returned by the registrar to the person by whom the fees were paid.

Where action not tried an allowance to be made to assessors.

17. The assessors shall sit in court with the Judge, and assist him when required with their opinion and special knowledge for the purpose of ascertaining the amount of compensation, if any, which the plaintiff is entitled to recover.

Assessors to sit with the Judge.

18. *Judgment where several Plaintiffs.*—Where two or more persons are joined as plaintiffs under Order III.,

Where more

plaintiffs
than one,
compensa-
tion due to
each to be
found.

Rule 1,* and the negligence, act, or omission which is the cause of action shall be proved, the judgment shall be for all the plaintiffs, but the amount of the sum so awarded for damages and the costs ordered to be paid to each plaintiff shall be found and set forth in the judgment, and the amount of costs awarded in the action shall be ordered to be paid to such person in such manner as the Court may think fit.

If the de-
fendant fail
to pay.

19. Should the defendant fail to pay the several amounts of compensation and the costs awarded in the action, execution against his goods may issue as in an ordinary action, and should the proceeds of the execution be insufficient, after deducting all costs, to pay the whole of the amounts awarded, a dividend shall be paid to each plaintiff, calculated upon the proportion of the amount which shall have been awarded to the respective plaintiffs to the total amount realised after the deduction of all the costs of the action as aforesaid.

FORMS.

I.—Notice of Injury.

Employers' Liability Act, 1880.

Date

189 .

I hereby give you notice that (a) [*here insert name of injured person in full*] of [*here insert his correct address*] was on the day of , 1882, injured [*or killed*] upon premises situate at [*here insert place where accident occurred*], in consequence of [*here insert briefly but succinctly the cause of injury*], he (b) being at such time a

All persons
may be
joined as
plaintiffs
in whom
any right
exists
jointly,
severally,
or in the
alternative.

* Order III., Rule 1, is as follows:—All persons may be joined as plaintiffs in whom the right of any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court, in disposing of the costs of the action, shall otherwise direct.

workman in your employ and lawfully engaged in your employment.

(Signed) (c) [*here sign the document*]

To [*here insert the employer's name*]

Of [*here insert address of employer*]

NOTES.—(a) The above form of notice is made out in a manner suitable for another person to write, and send it, on behalf of the individual injured. If the person injured is able to write the notice himself, he will have to insert, I, John Thomas, etc., of, etc. (b) Here *I* will have also to be inserted instead of *he* after the word *injury*. (c) If the document is drawn by another, on behalf of the injured person, the writer thereof must sign on his behalf. If drawn by the injured person himself, he must sign his name in full. The dates in each case must be filled in, that is, the date of notice at the top, and the date of the injury (lines two and three); also the place where the accident occurred, and the particulars of the cause of injury must be given, not necessarily in detail, but sufficiently clear to be understandable. The name of the employer, or firm, or company, must be correctly given, and also the address at foot of the notice. The foregoing form is set forth in much detail in order that a workman may be able without difficulty to give the preliminary notice himself.

II.—Form of Particulars of Demand.

Date,

189 .

This action is brought.—For that the plaintiff [*or plaintiffs*] being on the _____ day of _____, 189 , lawfully employed upon the defendant's work under a contract of service (a) made with the defendant, was on such day injured through the breaking of the defendant's machinery [*or plant*] to wit a _____ wheel [*or other article*] such machinery [*or plant*] being defective, and such defect having arisen [*or not having been discovered*] through the negligence of one A.B. [*here give the name of such person*] likewise a fellow-servant in defendant's employment,

and entrusted by the defendant with the duty of the inspection of his machinery [*or plant as the case may be*].

And the plaintiff claims, therefore, £ damages; [*or*] each of the *plaintiffs claim*, therefore, £ damages.

NOTE.—It will be seen that the above is a legal form of demand for damages when the action is brought.

III.—(a) *Form of Special Defences.*

(b) *Coverture; or (c) Statute of Limitations.*

NOTE.—Forms *a*, *b*, and *c* appertain to defences only, and are not therefore likely to be used by the workman. No. 3 will be used when the employer intends to give rebutting evidence, to rely upon such evidence as the grounds of defence.

IV.—*Form of Agreement Not to Appeal.*

(Title of action.)

We, [*or the respective agents or solicitors of*] the above-named plaintiff and defendant do hereby, under the provisions of the County Courts Act, 1888, agree that the decision of the Judge of this Court in this action shall be final.

Given under our hands this day of 189 .

Signatures Plaintiff [*or his Solicitor*].

Defendant [*or his Solicitor*].

NOTE.—This agreement may be made by the parties themselves, or by their agents or solicitors.

V.—*Form of Appeal.*

VI.—*Form of Special Case.*

NOTE.—These two forms need not be given, as they are not likely to be used by a plaintiff in an action, except under advice. They would only encumber our pages and perhaps mislead.

VII.—*Form of Application for Assessors.*

The Employers' Liability Act, 1880 (Form No. 128).

In the County Court of

holden at

Between A. B.

Plaintiff

and C. D.

Defendant.

The plaintiff [*or defendant*] applies to have this action tried with an Assessor [*or Assessors*], and he submits to His Honour the Judge the name of A. B.,* merchant (or as the case may be), or G. H.,* etc., as fit persons to be summoned to act as Assessors.

* (*Here give the names, addresses, and occupations of the persons referred to.*)

If the other side, whether defendant or plaintiff, consents to the appointment of the person or persons named to act as Assessors in the action, such consent must be given in writing, and be signed by the consenting party—whether plaintiff or defendant. If both sides agree the reference is mutual.

NOTE.—The foregoing forms supply all needful information for such stages in an action as workmen are likely to take on their own responsibility. Further instructions would only embarrass them, and perhaps lead to needless litigation, and vexatious law proceedings.

CHAPTER XIV.

TRUCK.—PAYMENT OF WAGES—STOPPAGES AND DEDUCTIONS, ETC. ETC.

THE State has, from very early times, asserted its right to deal with matters of wages, contracts, and other conditions of labour, sometimes beneficially to the workmen, at other times to their disadvantage. For several centuries attempts were made to fix wages, and enforce the rates so fixed; and also, to some extent, to fix the hours of labour, and other conditions of employment. During the present century legislative provisions for fixing wages have been mostly abandoned, and interference with the hours of labour has been mainly confined to women, young persons, and children. This is not the place in which to discuss the rights or wrongs of Parliamentary interference in these matters, or the policy or impolicy of such interference. We have only now to deal with, and briefly to expound, certain provisions of the law as it stands. Generally speaking, the legislature assumes the right of dealing with matters of contract; what should constitute a valid contract and what not; the conditions to be observed in fulfil-

ment of a contract ; the damages to be assessed for breach thereof ; whether the contract should be enforced or rescinded ; and the methods of procedure have been laid down in all cases, as well as the principles which legally govern the making, enforcing, or penalties for breaking a contract. In the present instance we deal only with labour contracts, or contracts of hiring and of service, in so far as questions of wages are concerned.

THE TRUCK ACTS.

These date back as early at least as the year 1464, in which year the 4 Edw. IV. c. 1 was passed, relating to the manufacture of cloths, § 2 being as regards wages. Further statutes relating to the matter of wages, etc., were passed as follows : 7 Edw. IV. caps. 1, 2, and 3 ; 17 Edw. IV. c. 5 ; 3 Hen. VII. c. 11 ; 3 Hen. VIII. c. 7 ; 14 & 15 Hen. VIII. c. 3 ; 4 Eliz. c. 1 ; 8 Eliz. c. 6 ; 8 Eliz. c. 7 ; 8 Eliz. c. 11, and 8 Eliz. c. 12 ; 14 Eliz. c. 12, and 13 & 14 Chas. II. c. 5. These mostly related to cotton and woollen manufactures. The 1 Anne, c. 18, § 3, passed in 1702, was more general, and applied to woollen, linen, fustian, cotton, and iron manufactures. This was amended in 1708, by 7 Anne, c. 13, continued by 9 Anne, c. 30, in 1710, and extended, in 1711, by 10 Anne, c. 16. In 1714 the 1 Geo. I. c. 15 further amended the Acts, and especially as to “the better payment of the poor employed” in the several branches of manufacture named in the Acts. Further Acts were passed—in 1725–6, the 12 Geo. I. c. 34 ; in 1726–7, the 13 Geo. I. c. 23 ; in 1739–40, the 13 Geo. II.

c. 8 ; in 1748-9, the 22 Geo. II. c. 27 ; in 1755-6, the 29 Geo. II. c. 33 ; in 1756-7, the 30 Geo. II. c. 12 ; in 1776-7, the 17 Geo. III. c. 56 ; in 1778-9, the 19 Geo. III. c. 49 ; in 1809, the 49 Geo. III. c. 109 ; in 1817, the 57 Geo. III. c. 115, 122 ; and in 1818, the 58 Geo. III. c. 51. All the earlier Acts of this series mixed up questions of truck and payment of wages with other questions of regulation, and with unlawful combinations as to wages and hours of labour. But some of them were more particularly "Truck Acts" in the proper sense of the term, the object being to secure payment of wages in the current coin of the realm. A later Act, in 1824, the 5 Geo. IV. c. 96, dealt with "Tickets of Work," in an Arbitration Act.

All the before-mentioned statutes, or such parts of them as related to truck, or payment of wages in goods instead of coin, were repealed by 1 & 2 Wm. IV. c. 36, except such of the sections as related to the recovery of wages due, prosecution of offenders, and the recovery of penalties under the Acts. The full title of the above-named Act was : "An Act to repeal several Acts and parts of Acts prohibiting the payment of wages in goods, or otherwise than in the current coin of the realm." Certain other portions of the said statutes were repealed by other Acts, either prior to 1831, or subsequently by specific statutes, or by the Statute Law Revision Acts.

The Truck Acts now in force are 1 & 2 Wm. IV. c. 37, "An Act to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm ;" and the 50 & 51 Vict. c. 46, "An Act to amend and extend the Law

relating to Truck," passed in 1887. Seven other Acts relating to wages, the payment of, deductions from, prohibiting the payment of in public-house, etc., are dealt with elsewhere in this chapter.

Truck means the payment of wages otherwise than in the current coin of the realm, that is to say in goods of any kind, either in full or part payment.

Definition of Truck.

The Truck Acts 1831 and 1887 apply only to such persons as may "enter into a contract to employ their personal service, and to receive payment for that service in wages."

To whom the Acts apply.

The Acts were "intended to protect those who engage for their personal labour."

It has been held that butty colliers engaged to get coal and ironstone from a mine, at so much per yard or ton, who are bound to work personally in the mine and do so work, are within the meaning of the Acts, although they employ other workmen under them.

Butty colliers within the Acts.

All wages (except of domestic servants) must be paid in the current coin of the realm only, and not otherwise. A contract which provides that any part of the wages shall be paid otherwise than in current coin is illegal—that is, null and void. (1 & 2 Wm. IV. c. 37, §§ 1 to 3; 50 & 51 Vict. c. 46.) If the wages are not paid actually and wholly in coin, the employer commits an offence. If any part of the wages be paid in goods, the payment is illegal and null, and the workman can sue for the amount. But if the workman freely consents, the payment may be in bank-notes or cheques payable on demand. (1 & 2 Wm. IV. c. 37, §§ 3, 4, and 8.)

Wages to be paid in coin.

Goods no
set-off, and
cannot be
sued for.

In an action for wages by a workman, the employer cannot set-off any goods supplied by himself or from any shop in which he is interested; nor can the employer sue for the value of such goods. Nor can the employer counterclaim for the value of any goods so supplied by himself, his agent, or under their direction; and even the person who actually supplied the goods in contravention of the Act cannot sue for the price of such goods. (1 & 2 Wm. IV. c. 37, §§ 5 and 6.) Payment for any such goods cannot be stopped by the employer, pay-clerk, foreman, or any other person. If the goods are supplied by the free consent of the workman, the transaction is equally illegal. Moreover, if deductions are made for goods so supplied, the offence is not purged by any subsequent payment.

Workman
cannot be
dismissed
for not
purchas-
ing at a
specified
shop.

No condition, direct or indirect, express or implied, may be imposed by the employer or his agent as to the spending of any part of the wages at a particular shop, and no employer or agent may dismiss a workman for dealing or not dealing at any particular shop. Any contract stipulating as to the manner of spending the wages earned is illegal and void. (1 & 2 Wm. IV. c. 37, § 2, and 50 & 51 Vict. c. 46, § 6.)

Advances
must be
made
without
interest.

Wherever advances have been the custom, the employer must not withhold such advances, or deduct interest therefor, or charge any discount. (50 & 51 Vict. c. 46, § 3.)

Barter of
knitted or
other
goods
under £5.

Where articles under five pounds in value are knitted or otherwise made by a person, or members of his family, of wool, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk, or any combination, or made or pre-

pared of loose thread, silk, or cotton lace, or lace of any mixed materials, the Truck Acts apply, and the person buying is treated as employer, and the price is treated as wages. (50 & 51 Vict. c. 46, § 10.) But this section may be temporarily, and either wholly or partially suspended in any district, on cause shown in the interests of the persons making the articles.

The 1 & 2 Wm. IV. c. 37, § 7, makes provision for the recovery by the overseers, in case of chargeability to the parish of the workman, his wife, or member of the family under twenty-one years of age, of any wages due and earned during the last preceding three months, and not paid to such workman in coin. Parish may recover wages.

An employer in agriculture may contract to give an agricultural labourer food, drink (not being intoxicating), a cottage, or other allowance or privileges, in addition to money wages. (50 & 51 Vict. c. 46, § 4.) It is not held to be an offence under the Acts to give cider, or other drink, in express addition to wages, and not as part of the contract for wages, or in part payment of wages, or in lieu of any portion of the wages. Provision as to agricultural labourers.

If a workman signs an agreement in writing to that effect, an employer may supply, and deduct for the real and true value of medicine, medical attendance, or fuel or materials, or tools or implements to miners to be used in mining, or provender for a workman's horse, or dwelling for a workman, or for food cooked and eaten by a workman under the roof of the employer. (1 & 2 Wm. IV. c. 37, § 23.) Certain deductions may be made if workman signs consent.

An employer may advance money to a workman for contributions to a friendly society or savings Advances by em-

ployer,
under
what
circum-
stances.

bank, or to a workman during sickness, or for education, and may deduct such advances from wages. (1 & 2 Wm. IV. c. 37, § 24.) But in the case of advances for education, the workman may select any State-inspected school to which to send his child, and be entitled to have school fees paid by the employer at the same rates as other workmen from whom deductions are made by the same employer. (50 & 51 Vict. c. 46, § 7.) But an employer cannot legally deduct or stop part of wages as a contribution to a fund established by the employer to provide medical attendance and medicine for those employed, or schools for their children, without the written consent of the workman.

In the case of *Cutts v. Ward*, 1867, it was held that deductions for rent and medical club were legal; but that deductions for wood lent for use in the work of the colliery were illegal under § 23 of the Act of 1831. No deductions can be made for sharpening or repairing tools, except by agreement not forming part of the condition of hiring. (50 & 51 Vict. c. 46, § 9.)

Audit of
deduc-
tions.

Where deductions are made for medical attendance, medicine, or tools, the employer must submit accounts once at least every year, and produce vouchers to two auditors to be appointed by the workmen, who are to have all facilities required for such audit. (50 & 51 Vict. c. 46, § 9.)

Penalties,
and on
whom.

The penalty on any employer or agent for directly or indirectly entering into any contract, or making any payment declared to be illegal (1 & 2 Wm. IV. c. 37, § 9), or for contravening any provisions of the Act (50 & 51 Vict. c. 46, §§ 11

and 12), is, for the first offence, not less than £5, and not exceeding £10; for a second offence, not less than £10, and not exceeding £20; for a third, or any subsequent offence, not exceeding £100. Separate offences carry separate penalties, but do not count as a second offence or third offence until after ten days from and within two years of previous conviction. (1 & 2 Wm. IV. c. 37, § 10.) Proceedings for a third offence are by indictment. (50 & 51 Vict. c. 46, § 13, Sub-section 1.)

If the employer be prosecuted for an offence committed by his agent, if he proves that he used due diligence to obey the law, and that the offence was committed without his knowledge, consent, or command, then, after conviction of real offender, the employer is exempt from penalties; and if the prosecutor be satisfied of all this, the proceedings may in the first instance be against the real offender. (50 & 51 Vict. c. 46, § 12, Sub-section 2.)

Inspectors of Factories and Inspectors of Mines are empowered and directed to enforce the Acts, and to prosecute; and in Scotland the procurators-fiscal have, as part of their official duty, to investigate, and prosecute, their respective costs being provided for. (50 & 51 Vict. c. 46, § 13, Sub-sections 2 and 3.) The Acts extend to Ireland. (50 & 51 Vict. c. 46, § 18.)*

* In the foregoing synopsis the late Mr. Bradlaugh's "Truck Law, and How to Enforce It," has been followed because it is well known to large numbers of workmen, and they will the easier recognise the points given. It was mainly due to his efforts that the portions of the Act of 1831 which restricted its provisions to certain trades were repealed by the Act of 1887. They now apply to all trades.

*Payment of Wages without Stoppages :
Hosiery Act, 1874.*

Hosiery
Act, 1874.

The full title of the Hosiery Act, 1874 (the 37 & 38 Vict. c. 48) is : “An Act to provide for the Payment of Wages without Stoppages in the Hosiery Manufacture.” The preamble recites : “Whereas a custom has prevailed among the employers of artificers in the hosiery manufacture of letting out frames and machinery to the artificers employed by them, and it is desirable to prohibit such letting of frames and machinery, and the stoppage of wages for frame rents and charges in the hosiery manufacture. Be it enacted as follows:—

Wages to
be paid
without
any
stoppages
whatever.

“§ 1. In all contracts for wages the full and entire amount of all wages, the earnings of labour in the hosiery manufacture, shall be actually paid and positively made payable in net, in the current coin of the realm, and not otherwise, without any deduction or stoppage of any description whatever, save and except for bad workmanship.

Contracts
to stop
wages and
for frame
rents
illegal.

“§ 2. All contracts to stop wages, and all contracts for frame rents and charges, between employers and artificers, shall be, and are hereby declared to be illegal, null, and void.

Penalty
for bar-
gaining to
deduct,
and for
deducting
from
wages.

“§ 3. If any employer shall bargain to deduct, or shall deduct, directly or indirectly, from the wages of any artificer in his employ, or part of such wages, for frame rent and standing or other charges, or shall refuse or neglect to pay the same or any part thereof in the current coin of the realm, he shall forfeit a sum of £5 for every such offence, to be recovered by the said artificer or other person suing for the same in the County Court in the district where the offence is committed, with full costs of suit.” *

* Deductions of fines for absence without permission is not within this section. (*Willis v. Thorp*, L. R. 10 Q. B. 383; 44 L. J. Q. B. 137.)

§ 4. Imposes a penalty of 10s. per day upon an artificer for working, using, or employing the frame or machine of the employer for any other person or otherwise, in the manufacture of any goods or articles whatsoever, without the consent in writing of the employer to whom such frame or machine belongs. The penalty in this case is recoverable in the County Court of the district, with full costs.

Penalty for using frame otherwise than for the purpose for which the same was lent.

§ 5. No action, suit, or set-off between employer and artificer shall be allowed for any deduction or stoppage of wages, nor for any contract hereby declared illegal.

No action to be allowed in respect of any such bargaining.

§ 6. Nothing in this Act contained shall extend to prevent the recovery in the ordinary course of law, by suit brought or commenced for the purpose, of any debt due from the artificer to the employer.

Not to prevent recovery by employer of debt due to him from artificer.

§ 7. For the purposes of this Act all workmen, labourers, or other persons engaged or employed in hosiery manufacture or processes of what nature soever, are deemed to be artificers within the meaning of the Act; and all masters, foremen, managers, clerks, contractors, sub-contractors, middlemen, or other persons engaged in giving, employing, or superintending the labour of such artificers are deemed to be employers, and any money or other thing had or contracted to be paid, delivered, or given as recompense, reward, or remuneration for any labour, whether for a certain time or amount, or for a time and amount uncertain, shall be deemed to be wages; and any mode of agreement, oral or written, whether direct or indirect, is deemed to be a contract.

Definition of terms.

§ 8. The date of commencement of Act was November 1st, 1874.

§ 9. Short title: "The Hosiery Manufacture (Wages) Act, 1874."

*Payments by Measurement or Quantity:
Textile Workers.*

For several centuries the legislature has endeavoured to secure to all classes of the community full value for their money, in so far as weight and measure is concerned; and for generations attempts have been made to ensure that the articles sold and supplied shall be free from adulteration, at least in so far as harmful adulteration is concerned. That complete success has not attended these efforts, in either case, goes without saying; but many of the evils that formerly existed have been abated, and in other instances minimised. The objects of all the Weights and Measures Acts have been to secure, as far as practicable, uniformity in weights and measures, and, consequently, simplicity; and to ensure the full weight and quantity to the purchaser. The object, on the other hand, of the Adulteration Acts has been to secure to the purchaser the genuine article for which he bargains and pays. Practically, in cases where legislation has been invoked, the object of all the Acts relating to labour, which seek to secure to the worker the full benefit of his industry, is the same, or similar. The employer, as a rule, is usually able to protect himself, in so far as the quality of the work is concerned. He has the right to deduct wages, or refuse to pay for bad work, and he may dismiss the workman from his employ. But the workman has not been equally successful, in all cases, in securing guarantees for the payment to

him of the full value of his labour. In the few instances in which legislation has taken place the principles of the Weights and Measures Acts have been partially applied, but only partially, as though the legislature felt a timidity or a reluctance to give to workmen engaged in labour the full benefit of the same principles, as regards payment for work done. Fair dealing is as righteous between the employer and employed, as between the seller and purchaser of goods in shop or market. Equity ought to rule in all cases.

1.—*Tickets of Work : Textile and other Trades.*

Under the old Guild System, “masters and servants,” as they were then called, were mutually protected as regards the measurement or quantity of goods made and sold. The practice thus established became the custom in after years, when the guilds had ceased to exist, or only existed in certain towns or districts. But gradually the men found less protection, and the aid of the law was sought and obtained. This was particularly so in the silk, woollen, and other textile manufactures. The disputes that arose were settled by the Justices, by whom also the wages or prices were fixed, particularly in the Spitalfields Acts, not so much by litigation as by a species of arbitration, the Justices being sole arbitrators.

Most of the Acts relating to labour, as to prices, tickets of work, recovery of wages (though in some instances those provisions were saved), combinations, arbitrations, etc., were repealed, in June, 1824, by the 5 Geo. IV. c. 95. Others were re-

pealed at the same date by the 5 Geo. IV. c. 96, by "An Act to consolidate and amend the Laws relative to the Arbitration of Disputes between Masters and Workmen," a list of seven being given in the preamble and § 1. This Act is still in force.

Causes of dispute that may be referred to arbitration.

§ 2. Enumerates the causes of dispute that may be referred to arbitration, among which are: disagreements as to the price to be paid for work done, or being done, respecting payment of wages as agreed, hours of labour, or injury or damage to work; delay, or supposed delay in finishing work, or not finishing work, or not finishing work in a good and workmanlike manner, or bad materials, according to contract; new patterns, or alterations in pattern, requiring new implements, or the alteration of old implements; disputes respecting the length, breadth, or quality of pieces of goods, or yarn in cotton and woollen manufactures, and the wages or compensation to be paid for extraordinary lengths, and disputes respecting the making of a variety of articles in cotton manufactures, etc., etc.

The three following sections are still in force:—

Tickets of particulars to be given out with work.

"§ 18. That with every piece of work given out by the manufacturer to a workman to be done, there shall, if both parties are agreed, be delivered a note or ticket, in such form as the said parties shall mutually agree upon; and which said note or ticket, in the event of dispute between the manufacturer and workman, shall be evidence of all matters and things mentioned therein or respecting the same.

Duplicate of such tickets.

"§ 19. That a duplicate of every such note or ticket shall be made and kept by the master or agent delivering the same, which duplicate shall be evidence of all the matters and things therein con-

tained, in case the workman shall not produce to the arbitrators or the said Justices, as the case may be, the said note or ticket so delivered to him with the said work.

“§ 20. That it shall not be allowable to any manufacturer, who shall have received into his possession any article, without objection made within twenty-four hours by himself, or his clerk or foreman, afterwards to make any complaint on account of the work so received.”

Manufacturers receiving articles not to complain afterwards.

The above sections are limited to things and matters mutually agreed upon, and have to be administered in accordance with the provisions of the Act, which deal only with arbitrations by arbitrators, or by Justices of the Peace.

Tickets of Work : Hosiery.—In 1845 the Act of Geo. IV. c. 96, before quoted, was amended by the 8 & 9 Vict. c. 77: “An Act to make further Regulation respecting the Tickets of Work to be delivered to Persons employed in the Manufacture of Hosiery, in certain cases.” After reciting a portion of one of the sections before given, in the Act of 1824, the preamble states that it is expedient to make further provision for the delivery of “a note or ticket to persons employed in the woollen, worsted, linen, cotton, and silk hosiery manufactures.”

§ 1. Enacts that from and after January 1st, 1846, “when any manufacturer of hosiery, or the agent of such manufacturer, gives out to a workman the materials to be wrought, such manufacturer or agent shall at the same time deliver to such workman a printed or written ticket, signed by such manufacturer, containing the particulars of the agreement between” them, etc. Provision is also similarly made for a duplicate ticket, and a long

Manufacturer to deliver with materials a ticket of work.

schedule of particulars to be given is annexed to the Act.

Ticket
to be
evidence.

§ 2. Provides that the ticket and duplicate shall be evidence in case of a dispute, both being required to be produced, but together, or either of them shall be evidence of the matters or things mentioned therein.

When
dispute
arises as to
imperfect
execution,
work to be
produced.

§ 3. Provides that in case of dispute as to improper or imperfect execution of any work delivered, such piece of work shall be produced in evidence in order to adjudication ; if not produced, to be deemed to have been sufficiently and properly executed.

Tickets of Work : Silk Weavers.—In the same year, 1845, an Act was passed, the 8 & 9 Vict. c. 128, “to make further Regulation respecting the Tickets of Work to be delivered to Silk Weavers, in certain cases.”

After reciting the 5 Geo. IV. c. 96, and quoting that portion of the Act which relates to silk weavers, it goes on to enact :—

Manufac-
turer to
deliver
with work
a ticket of
work.

§ 1. That from and after January 1st, 1846, when any manufacturer of silk goods, or of goods made of silk mixed with other materials, “or his agent, gives out to a weaver of such goods a piece of work to be woven,” he shall, unless they otherwise mutually agree in writing to dispense therewith, deliver “a printed or written ticket,” signed by the manufacturer or his agent, containing certain particulars as to the “count or richness of warp or cane, number of shoots or picks required in each inch ; number of threads of weft to be used in each shoot ; name of manufacturer or firm ; weaver’s name and date of engagement ; and the price sterling money to be paid for each yard Imperial standard of thirty-six

inches of such work executed in a workmanlike manner." It further provides that a duplicate shall be made and kept, until the work has been completed or paid for.

§ 2. Provides that the ticket shall be evidence, etc.

§ 3. To be produced in order to adjudication, etc.

§ 4. Any manufacturer or his agent neglecting or refusing to deliver such ticket to a workman with the materials given out, and the workman complains thereof to any Justice of the Peace having jurisdiction in the place, such Justice may summon the manufacturer or agent to appear before two Justices, when if the complaint be proved the Justices may inflict a penalty not exceeding £5, and costs. One of the Justices at least must not be an interested party either by relationship, or by being engaged in the trade.

Penalty on manufacturer for non-delivery of ticket.

§ 5. Gives the power of summoning witnesses; § 6 provides as to service of summons; § 7, as to levying and application of penalty; § 8 provides that no order, conviction, or distress shall be unlawful for want of form; § 9 gives interpretation, and § 10 as to alteration of Act.

The substance of the Act is in force, in the sections quoted, but the procedure has changed under recent Acts, so as to conform to the procedure in the courts of summary jurisdiction, etc.

In Ireland similar provisions governing the linen, cotton, woollen, silk, and jute trades, are in force under the 3 & 4 Vict. c. 91, §§ 16 and 17, which Act is annually renewed by the Expiring Laws Continuance Act.

II.—*Particulars of Work : Textile Workers.*

The Factory and Workshop Act, 1891 (the 54 & 55 Vict. c. 75), makes an important provision as to particulars of work, in cases where the work is done by the piece, as follows :—

Particulars to be supplied in case of payment by piece.

“§ 24. Every person who is engaged as a weaver in the cotton, worsted, or woollen, or linen, or jute trade, or as a winder, weaver, or reeler in the cotton trade, and is paid by the piece, in or in connection with any factory or workshop, shall have supplied to him with his work sufficient particulars to enable him to ascertain the rate of wages at which he is entitled to be paid for the work, and the occupier of the factory or workshop shall supply him with such particulars accordingly.

“If the occupier of any factory or workshop fails to supply such particulars then, unless he proves that he has given the best information in his power with respect to such particulars, he shall be liable for each offence to a fine not exceeding £10, and in the case of a second or subsequent conviction for the same offence, within two years from the last conviction for that offence, not less than £1.

“Provided always, that in the event of any one who is engaged as an operative in any factory receiving such particulars, and subsequently disclosing the same with a fraudulent object or for the purpose of gain, whether they be furnished directly to him or by or to a fellow-workman, he shall be liable for each such offence to a fine not exceeding £10.

“Provided also, that any one who shall solicit or procure a person so engaged in any factory to disclose such particulars with the object or purpose aforesaid, or shall pay or reward such person, or shall cause such person to be paid or rewarded for so disclosing such particulars, shall be guilty of an

offence, and shall be liable for each such offence to a fine not exceeding £10."

§ 40. This Act came into operation on January 1st, 1892.

§ 41. This Act may be cited as the Factory and Workshop Act, 1891.

Com-
mence-
ment of
Act, and
short title.

The curious thing about § 24 is that in the event of an offence against the provisions of the section by an employer, he is fined for the first offence a maximum of £10; but in the case of a second or subsequent offence he is fined a minimum of £1. Usually the second offence is punished more heavily. It will be seen that the employer is protected, in so far as making the disclosure of particulars by a workman an offence, liable to a penalty not exceeding £10 for each such offence.

Payment by Weight of Persons employed in Mines.

Miners are paid in two ways—by the day, or by the amount of work done. The latter practice has more generally prevailed, when it was practicable to measure the quantity by a common or recognised standard. In coal getting, the standard by which the miner was formerly paid was either "measure" or "weight." Payment by measure was the more general custom until 1860. The measure system was found to be disadvantageous to the workmen, for the tubs were in some cases enlarged, or "rocked," and if the coal was found to be "dirty" in packing, it was forfeited to any amount. It is said that the fault was on both sides: "Men tried to defraud the masters, as well as masters the men," was the statement made at the Leeds Conference

of Miners in 1863. This state of things led to discontent, and efforts were made to substitute weight for measure in all cases, as better for both parties.

In revising the Inspections Act of 1860, the Government was prevailed upon to insert a clause ordering that the coal should be duly weighed by a just steelyard at the pit's mouth, and providing that the men might, at their own expense, appoint a check weigher to see and take account of their work. The weighing clause was opposed, but it was carried in the House of Commons; it was, however, rejected in the Lords. The House of Commons then rejected the Bill as it came from the Lords. But later on, as it was an expiring Bill, § 29 was amended, assenting to the appointment of a check weigher, provided that he were selected from the colliery at which he was employed as check weighman. A curious case arose out of this, *Normansell v. Platt*, the men having appointed Normansell, who was discharged by the firm. The case was carried to the Court of Queen's Bench, with the result that Normansell was reinstated.

Provision was made in the Coal Mines Regulation Act, 1872 (36 & 37 Vict. c. 77), by § 17, as to payment of persons employed in mines by weight, with certain exceptions to be determined by the Secretary of State, and by § 18 as to the appointment and removal of the check weigher on the part of the men, the latter paying the cost of such check weigher. § 19 applied the Weights and Measures Act to weights used in the mines. As that Act is now repealed, it will be better to quote the provisions of the later Act.

The Coal Mines Regulation Act, 1887 (the 50 & 51 Vict. c. 58), provides as follows:—

“§ 12. (1.) Where the amount of wages paid to any of the persons employed in a mine depends on the amount of mineral gotten by them, those persons shall be paid according to the actual weight gotten by them of the mineral contracted to be gotten, and the mineral gotten by them shall be truly weighed at a place as near to the pit mouth as is reasonably practicable. Payment of persons employed in mines by weight.

“Provided that nothing in this section shall preclude the owner, agent, or manager of the mine from agreeing with the persons employed in the mine that deductions shall be made in respect of stones or substances other than the mineral contracted to be gotten, which shall be sent out of the mine with the mineral contracted to be gotten, or in respect of any tubs, baskets, or hutches being improperly filled in those cases where they are filled by the getter of the mineral or his drawer, or by the person immediately employed by him; such deductions being determined in such special mode as may be agreed upon between the owner, agent, or manager of the mine on the one hand, and the persons employed in the mine on the other, or by some person appointed in that behalf by the owner, agent, or manager, or (if any check weigher is stationed for this purpose as hereinafter mentioned) by such person and such check weigher, or in case of difference by a third person to be mutually agreed on by the owner, agent, or manager of the mine on the one hand, and the persons employed in the mine on the other, or in default of agreement appointed by a chairman of a court of quarter sessions within the jurisdiction of which any shaft of the mine is situate.

“(2.) If any person contravenes or fails to comply with, or permits any person to contravene or fail to comply with, this section, he shall be guilty of an offence against this Act; and in the event of any

such contravention or non-compliance by any person whomsoever, the owner, agent, and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reasonable means by publishing and to the best of his power enforcing the provisions of this section to prevent the contravention or non-compliance.

“(3.) Where it is proved to the satisfaction of a Secretary of State, in the case of any mine or class of mines employing not more than thirty persons underground, to be expedient that the persons employed therein should, upon the joint representation of the owner or owners of any such mine or class of mines and the said persons, be paid by any method other than that provided by this Act, such Secretary of State may, if he think fit, by order allow the same either without conditions or during the time and on the conditions specified in the order.

Appoint-
ment on
part of
men, and
removal,
of check
weigher.

“§ 13. (1.) The persons who are employed in a mine, and are paid according to the weight of the mineral gotten by them, may, at their own cost, station a person (in this Act referred to as ‘a check weigher’) at each place appointed for the weighing of the mineral, and at each place appointed for determining the deductions, in order that he may, on behalf of the persons by whom he is so stationed, take a correct account of the weight of the mineral or determine correctly the deductions as the case may be.

“(2.) A check weigher shall have every facility afforded to him for enabling him to fulfil the duties for which he is stationed, including facilities for examining and testing the weighing machine, and checking the taring of tubs and trams where necessary; and if at any mine proper facilities are not afforded to a check weigher as required by this section, the owner, agent, and manager of the mine shall each be guilty of an offence against this Act, unless he proves that he had taken all reason-

able means to enforce to the best of his power the requirements of this section.

“(3.) A check weigher shall not be authorised in any way to impede or interrupt the working of the mine, or to interfere with the weighing, or with any of the workmen, or with the management of the mine; but shall be authorised only to take such account or determine such deductions as aforesaid, and the absence of a check weigher from the place at which he is stationed shall not be a reason for interrupting or delaying the weighing or the determination of deductions at such place respectively, but the same shall be done or made by the person appointed in that behalf by the owner, agent, or manager, unless the absent check weigher had reasonable ground to suppose that the weighing or the determination of the deductions, as the case may be, would not be proceeded with: Provided always, that nothing in this section shall prevent a check weigher giving to any workman an account of the mineral gotten by him, or information with respect to the weighing, or the weighing machine, or the taring of the tubs or trams, or with respect to the deductions or any other matter within the scope of his duties as check weigher, so always, nevertheless, that the working of the mine be not interrupted or impeded.

“(4.) If the owner, agent, or manager of the mine desires the removal of a check weigher on the ground that the check weigher has impeded or interrupted the working of the mine, or interfered with the weighing, or with any of the workmen, or with the management of the mine, or has at the mine to the detriment of the owner, agent, or manager done anything beyond taking such account, determining such deductions, or giving such information as aforesaid, he may complain to a court of summary jurisdiction, who, if of opinion that the owner, agent, or manager shows sufficient *primâ facie* ground for the removal of the check weigher,

shall call on the check weigher to show cause against his removal.

“(5.) On the hearing of the case the court shall hear the parties, and, if they think that at the hearing sufficient ground is shown by the owner, agent, or manager to justify the removal of the check weigher, shall make a summary order for his removal, and the check weigher shall thereupon be removed, but without prejudice to the stationing of another check weigher in his place.

“(6.) The court may in every case make such order as to the costs of the proceedings as the court may think just.

“(7.) If in pursuance of any order of exemption made by a Secretary of State, the persons employed in a mine are paid by the measure or gauge of the material gotten by them, the provisions of this Act shall apply in like manner as if the term ‘weighing’ included measuring and gauging, and the terms relating to weighing shall be construed accordingly.

“(8.) If the person appointed by the owner, agent, or manager to weigh the mineral impedes or interrupts the check weigher in the proper discharge of his duties, or improperly interferes with or alters the weighing machine or the tare in order to prevent a correct account being taken of the weighing and taring, he shall be guilty of an offence against this Act.

Remune-
ration of
check
weigher.

“§ 14. (1.) Where a check weigher has been appointed by the majority, ascertained by ballot, of the persons employed in a mine who are paid according to the weight of the mineral gotten by them, and has acted as such, he may recover from any person for the time being employed at such mine and so paid, his proportion of the check weigher’s wages or recompense, notwithstanding that any of the persons by whom the check weigher was appointed may have left the mine or others have entered the same since the check weigher’s

appointment, any rule of law or equity to the contrary notwithstanding.

“(2.) It shall be lawful for the owner or manager of any mine, where the majority of the before-mentioned persons, ascertained as aforesaid, so agree, to retain the agreed contribution of the persons so employed and paid as aforesaid for the check weigher, notwithstanding the provisions of the Acts relating to truck, and to pay and account for the same to the check weigher.

“§ 15. (1.) The Weights and Measures Act, 1878, shall apply to all weights, balances, scales, steelyards, and weighing machines used at any mine for determining the wages payable to any person employed in the mine according to the weight of the mineral gotten by him, in like manner as it applies to weights, balances, scales, steelyards, and weighing machines used for trade. Applica-
tion of
41 & 42
Vict. c. 49,
to weights,
etc., used
in mines.

“(2.) An inspector of weights and measures appointed under the said Act shall once at least in every six months inspect and examine in manner directed by the said Act the weights, balances, scales, steelyards, and weighing machines used or in the possession of any person for use as aforesaid at any mine within his district; and shall also make such inspection and examination at any other time in any case where he has reasonable cause to believe that there is in use at the mine any false or unjust weight, balance, scale, steelyard, or weighing machine.

“(3.) The inspector shall also inspect and examine the measures and gauges in use at the mines within his district; but nothing in this section shall prevent or interfere with the use of the measures or gauges ordinarily used at the mine.

“(4.) An inspector may, for the purposes of this section, without any authorisation from a justice of the peace, exercise at or in any mine, as respects all weights, measures, scales, balances, steelyards,

and weighing machines used or in the possession of any person for use at or in that mine, all such powers as he could exercise, if authorised in writing by a justice of the peace, under section forty-eight of the Weights and Measures Act, 1878, with respect to any such weights, measures, scales, balances, steelyards, and weighing machines as therein mentioned; and all the provisions of that section, including the liability to penalties, shall apply to such inspection.

“(5.) The inspector of weights and measures shall not, in fulfilling the duties required of him under this section, impede or obstruct the working of the mine.”

The provisions of the Coal Mines Regulation Act, 1887, with respect to check weighmen, were amended in 1894 by the 57 & 58 Vict. c. 52, Coal Mines (Check Weigher) Act, 1894. The object of this Act is to place the check weigher in a position of absolute independence, so that he may perform his duties without fear of molestation, and secure to the miners full payment for all the coal sent to the surface. § 1 imposes a penalty for interference with the office of check weigher by the owner, agent, or manager of any mine, or by any person employed or acting under their instructions; or for interfering with the appointment of any such check weigher; or for refusing or neglecting to afford proper facilities for such appointment; or for attempting by threats, bribes, promises, notice of dismissal, or otherwise howsoever, to exercise improper influence in respect of such appointment, or to induce the persons entitled to appoint, or any of them not to reappoint, a check weigher, or to vote against any particular person or class of persons as such; any owner, agent, or manager so

Penalty for interfering with appointment of check weigher.

acting shall be guilty of an offence against the Coal Mines Regulation Act, 1887.

§ 2. Provides that the persons entitled to appoint a check weigher may, if they think fit, appoint him for a term specified in such appointment, in which case he shall not be removable before the expiration of such term, except by order of a court of summary jurisdiction. These provisions must be read and construed with the sections pertaining to check weighers in the Coal Mines Regulation Act, 1887, as before given.

Check
weigher
not remov-
able except
by legal
process.

Attachment of Wages.

This is the legal expression for the seizure of goods by legal authority. This power of seizing goods was abolished in 1870, by the 33 & 34 Vict. c. 30: "An Act to abolish Attachment of Wages." As the preamble gives the reasons for the abolition, and as the Act is a short one, we quote it in full:—

"Whereas by an Order in Council, made on the 18th day of November, 1867, certain of the provisions of 'The Common Law Procedure Act, 1854,' were extended and applied to all the Courts of Record established under the provisions of the 'County Courts Act, 1846,' and also to the City of London Courts of Record as constituted by the 'County Courts Act, 1867'; And whereas much inconvenience has arisen by the attachment of wages to satisfy judgments recovered in some of such first-mentioned courts, and it is expedient to prevent the attachment of wages to satisfy judgments recovered in any Court of Record or inferior Court. Be it enacted:—

"§ 1. That after the passing of this Act no order for the attachment of the wages of any servant, No order of attach-

ment of labourer, or workman,* shall be made by the Judge wages after of any Court of Record or inferior Court.
passing of Act.

Short title. "§ 2. That this Act may be cited as 'The Wages Attachment Abolition Act, 1870.'" This Act applies to England and Ireland.

It has been held that the provisions of this Act do not prevent the attachment of the quarterly salary of a secretary to a company; nor of a superannuation allowance;† nor of a pension.‡ Under the Merchant Shipping Acts, seamen's wages, whether due or accruing, cannot be attached. (57 & 58 Vict. c. 60, § 163.)

Wages Arrestment, Scotland.—Arrestment of wages in this case means precisely the same as Attachment of Wages in England. The provision for Scotland is to be found in the Small Debts, Scotland, Act, 1825 (6 Geo. IV. c. 48), amended in 1837 by the 7 Wm. IV. and 1 Vict. c. 41, § 7, as follows:—

"And be it enacted and declared, that wages of labourers and manufacturers shall, so far as necessary for their subsistence, be deemed to be alimentary, and, in like manner as servants' fees, and other alimentary funds, not liable to arrestment." The term "manufacturers" in this section presumably means the same as workmen in the Act of 1870.

The Act was further amended in 1845, by the 8 & 9 Vict. c. 39: "An Act to amend the Law of

* See *Jones v. Thompson*, 27 L. J. Q. B. 234; and *Dresser v. Jones*, 28 L. J. C. P. 281.

† See *Booth v. Trail*, 12 Q. B. D. 8; 43 L. J. 24; 49 L. J. 471; and 32 W. R. 122.

‡ See *Willock v. Tirrell* (C. A.), 3 Ex. D. 323; and 39 L. J. 84.

Arrestment of Wages in Scotland.” After reciting the before-mentioned Acts, and declaring that it is expedient that the said Acts should be amended, as regards the arrestment of wages, it enacts, § 1:

“ That from and after the passing of this Act it shall not be lawful or competent to arrest wages upon the dependence of any action raised by virtue of the said recited Acts (that is the Acts for the Recovery of Small Debts in Scotland), anything therein contained to the contrary notwithstanding.”

Arrestment of wages not competent in dependence of action.

In the year 1870, the same year as that in which the Act to abolish Attachment of Wages was passed for England, and presumably Ireland, “ An Act to limit Wages Arrestment in Scotland ” was passed—the 33 & 34 Vict. c. 63. The preamble recites that: “ Whereas great evils have arisen through the arrestment of wages of labourers, manufacturers, artificers, and other workpeople, and also by the provisions relating to such arrestment in the Act 1 Vict. c. 41, and it is desirable to remedy these evils. Be it enacted:—

“ § 1. That . . . the wages of all labourers, farm servants, manufacturers, artificers, and workpeople shall cease to be liable to arrestment for debts contracted subsequent to the passing of this Act, save as hereinafter excepted.

Wages of artificers not to be liable to arrestment for debts after Jan. 1st, 1871.

“ § 2. If the amount of wages earned exceeds twenty shillings per week, any surplus above that amount shall still be liable to arrestment as before the passing of this Act, but the expense or cost of any such arrestment shall not be chargeable against the debtor unless in virtue of such arrestment the arresting creditor shall recover a sum larger than the amount of such expense or cost.

Limitation of liability of wages to arrestment.

“ § 3. No arrestment of wages shall hereafter attach more than the amount of any surplus above

As to debts incurred

before the passing of Act. twenty shillings per week, unless it shall be stated on the face of the arrestment or endorsed thereon, that the debt in respect of which it is used was incurred prior to the passing of this Act; and such statement may be made by a memorandum on the arrestment subscribed by the officer executing the same.

Act not to affect decrees for alimentary allowances, or for rates or taxes. “§ 4. This Act shall in no way affect arrestments in virtue of decrees for alimentary allowances or payments, or for rates and taxes imposed by law; but every arrestment used . . . for such alimentary allowances or payments, or for rates or taxes imposed by law, shall set forth the nature of the debt for which it has been used, otherwise the same shall not be effectual.

Short title “§ 5. This Act may be cited as the ‘Wages Arrestment Limitation (Scotland) Act, 1870.’ ”

It would seem that superannuation allowances, pensions, or sick payments, in Scotland are secured from arrestment, while such are not held to be secured from attachment in England or Ireland.

Preferential Claims in case of Bankruptcy.

Preferential claim in the case of apprenticeship. In the Bankruptcy Act of 1869 (the 32 & 33 Vict. c. 71), there was provision (§ 33) for a preferential claim for any person apprenticed, or an artied clerk to a bankrupt, if either the apprentice, the clerk, or the bankrupt gave notice thereof in writing to the trustee to that effect, to the complete discharge of the indenture of apprenticeship or articles of agreement; and if any money had been paid as fee to the bankrupt by or on behalf of such apprentice or clerk, the trustee may repay such portion as he may deem reasonable; or the trustee might transfer the indenture or articles upon application so to do.

By § 32 of the same Act there was a provision for priority of certain debts, but between such debts all ranked equally to be paid in full, if the estate of the bankrupt was sufficient; if insufficient they were to rank equally, and abate in equal proportions. Sub-section 1 had reference to parochial and other local rates and the Queen's taxes; and Sub-section 2 included "all wages or salary of any clerk or servant (1) in the employment of the bankrupt at the date of the order of adjudication, not exceeding four months' wages or salary, to the extent of £50; and all wages of any labourer or workman in the employment of the bankrupt at the date of the order of adjudication, not exceeding two months' wages." No limit of amount was given.

1. It was held in the case of *Ex parte Walter*, L. R. 15 Eq. 412, that neither a music-master nor a drill-sergeant attending a school, and paid weekly or by the hour, or by the lesson, came within the words of the section.

In the Bankruptcy Act of 1883 (the 46 & 47 Vict. c. 52), now in force, priority of debts is provided for in §§ 40 and 41.

§ 40. Provides: (1.) "In the distribution of the property of a bankrupt there shall be paid in priority to all other debts," (a) All parochial and other local rates due, and all assessed taxes, land property or income tax, not exceeding one year's assessment. (b) "All wages or salary* of any clerk or servant in respect of services rendered to

Preferential claim for wages, etc.

* The words of the sub-section are "wages or salary," and it has been held that a clerk paid by commission cannot claim.

the bankrupt during four months before the date of the receiving order, not exceeding £50.”

(c) “All wages of any labourer or workman not exceeding £50, whether payable for time or piece-work, in respect of services rendered to the bankrupt during four months before the date of the receiving order.” (2.) “The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.”

Preferential claim in case of apprenticeship.

§ 41. (1.) “Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articulated clerk to the bankrupt, the adjudication in bankruptcy shall, if either the bankrupt, the apprentice or clerk gives notice in writing to the trustee, be a complete discharge of the indenture of apprenticeship, or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt’s property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and other circumstances of the case.

“(2.) Where it appears expedient to the trustee, he may, on the application of any apprentice or articulated clerk to the bankrupt, or by any person acting on behalf of such apprentice or articulated clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.”

Similarly preferential claims are provided for in the Companies Acts—for England and Scotland in 51 & 52 Vict. c. 62, and for Ireland in 52 & 53 Vict. c. 60, as to rates, taxes, wages, and salaries, etc.

Preferential claims for wages, etc., under Companies Acts.

Preferential claims to wages in Scotland are provided for in 19 & 20 Vict. c. 79, § 122, called “privileged debts to a limited amount,” and 38 & 39 Vict. c. 26.

Preferential claims to wages in Ireland are provided for in the General Act, 46 & 47 Vict. c. 52, §§ 40 and 41.

Prohibition of Payment of Wages in Public-Houses : Miners.—The payment of wages of miners in public-houses was prohibited by the Coal Mines Regulation Act, 1872 (the 35 & 36 Vict. c. 76), § 16, which provided as follows:—

“No wages shall be paid to any person employed in or about any mine to which this Act applies, at or within any public-house, beershop, or other place for the sale of any spirits, beer, cider, or other spirituous or fermented liquor, or other house of entertainment, or any office or garden, or place belonging or contiguous thereto, or occupied therewith.

Prohibition of payment of wages at public-houses, etc.

“Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with this section shall be guilty of an offence against this Act; and in the event of any such contravention or non-compliance by any person whomsoever, the owner, agent, and manager shall each be guilty of an offence against this Act, unless he prove that he had taken all reasonable means, by publishing and to the best of his power enforcing the provisions of this section, to prevent such contravention or non-compliance.”

The same provisions were enacted in the Metalliferous Mines Act, 1872 (the 35 & 36 Vict. c. 77), § 9, and need not therefore be repeated.

The Coal Mines Regulation Act, 1887, repealed the Act of 1872, but re-enacted § 16. The section now in force is § 11 of 50 & 51 Vict. c. 58, together with § 9 of the Metalliferous Mines Act, 1872. In any proceedings under these sections, the particular Act applying to the mine, whether coal* or other mineral, as the case may be, must be quoted, and the sections.

General Prohibition of Payment of Wages in Public-Houses.—In the year 1883, “An Act to prohibit the Payment of Wages to Workmen in Public-Houses and certain other places” was passed, being the 46 & 47 Vict. c. 31. This Act extended the prohibition as to payment of wages in public-houses, etc., contained in the Coal Mines Regulation Act, 1872 (the 35 & 36 Vict. c. 76), § 16, and in the Metalliferous Mines Act, 1872 (the 35 & 36 Vict. c. 77), § 9, to all workmen. It is the general Act now in force.

The above Act applied, in England, the Summary Jurisdiction Acts; in Scotland the 27 & 28 Vict. c. 53, and 44 & 45 Vict. c. 33, the Summary Jurisdiction (Scotland) Acts, 1864 and 1881, respectively.

The preamble to the Act states that it is expedient to extend the prohibition contained in the

* The Coal Mines Regulation Act applies to “mines of coal, mines of stratified ironstone, mines of shale, and mines of fireclay.” But in the case of dispute the Secretary of State must decide whether or not the mine comes within the provisions of the Metalliferous Mines Act, and his decision is final,

Mines Acts to all workmen. § 1 gives the short title as “the Payment of Wages in Public-Houses Prohibition Act, 1883.”

§ 2 defines “workman” as “any person who is a labourer, servant in husbandry, journeyman, artificer, handicraftsman, or who is otherwise engaged in manual labour,” whether under or above twenty-one years of age; but does not include a domestic or menial servant, or miner.

Definition
of work-
man.

§ 3. “No wages shall be paid to any workman at or within any public-house, beershop, or place for the sale of any spirits, wine, cider, or other spirituous or fermented liquor, or any office, garden, or place belonging thereto or occupied therewith, save and except such wages as are paid by the resident owner or occupier of such public-house, beershop, or place, to any workman *bonâ fide* employed by him.

No wages
to be paid
at or with-
in a public-
house.

“Every person who contravenes or fails to comply with, or permits any person to contravene or fail to comply with this Act, shall be guilty of an offence against this Act. And in the event of any wages being paid by any person in contravention of the provisions of this Act for or on behalf of any employer, such employer shall himself be guilty of an offence against this Act, unless he prove that he had taken all reasonable means in his power for enforcing the provisions of this Act, and to prevent such contravention.

§ 4. “Every person who is guilty of an offence against this Act shall be liable to a penalty not exceeding £10 for each offence; and all offences against this Act may be prosecuted and all penalties under this Act may be recovered by any person summarily in England, in the manner provided by the Summary Jurisdiction Acts, and in Scotland in the manner provided by the Summary Jurisdiction (Scotland) Acts, 1864 and 1881.

Penalties.

§ 5. “This Act shall not apply to Ireland.”

Hire and Payment of Seamen.

The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), is a consolidation Act, all previous Merchant Shipping Acts, and the provisions specifically relating thereto, being repealed, and reproduced in this Act. Part II., §§ 92 to 226, relate to "Masters and Seamen." §§ 92 to 104 deal with certificates of competency to be held by officers of ships, engineers, etc., and provide for examinations, etc.

§§ 105 to 109. Relate to "apprenticeship to the Sea Service." They provide as to pauper apprentices; indentures to be in duplicate, and exempt from stamp duty; for production of indenture before voyage in foreign-going ship, and for penalties for any breach of these provisions.

§§ 110 to 112. Relate to "Licences to supply Seamen." The Board of Trade may grant licence; penalty for engaging seamen without such licence; and penalty for receiving remuneration from seamen for engagement.

§§ 113 to 124. Relate to the "Engagement of Seamen." Provide that the master of every ship (exclusive of those of less than 80 tons registered tonnage, trading exclusively within the ports of the United Kingdom) shall enter into an engagement with crew; give the form, period, and conditions of agreement; make special provision as to agreements with crew of foreign-going ships, and with crew of home-trade ships; changes in crew of foreign-going ships to be reported, master to produce certificate thereof to Officer of Customs, and of agreements with crew of home-trade ships; copy

of agreement to be accessible to crew ; penalties for forgery of agreement ; alterations in agreements with crew to be inoperative unless made by consent of all persons interested ; seamen are not bound to produce agreement, but may produce other evidence. Provision is made as to the engagement of seamen in colonial and foreign ports, etc.

§ 125 relates to "Agreements with Lascars," § 126 as to "Rating of Seamen," and § 127 as to "Discharge of Seamen ;" how and where to be discharged ; certificate ; reports as to seamen's character ; and § 130 as to penalties for false or forged certificate of discharge or report as to character.

§§ 131 to 139. Relate to "Payment of Wages." They provide that wages shall be paid before superintendent in port of United Kingdom, unless a competent Court otherwise direct. Master to deliver account of wages ; deductions not allowed unless included in the account, and all such deductions to be entered in a book. Provision is made (§ 134) as to time of payment of wages for foreign-going ships, and (§ 135) as to home-trade ships, and for the recovery of wages without delay, with double pay for unnecessary delay, up to ten days' double pay. § 136. Settlement of wages to be before a superintendent, with proper release. § 137. Superintendent may adjudicate questions as between master and seamen or apprentice up to £5. § 138. Superintendent may require production of ship's papers. § 139. If payment is made in foreign money, to be at the rate of exchange sterling stated in the agreement when made.

§§ 140 to 144. Relate to "Advance and Allot-

ment of Wages.” § 140. Advance Notes restricted to one month’s wages under the agreement. § 141. Regulations as to allotment notes to be stated in the agreement as to amounts and times of payment; may be made through a savings bank. § 142. How made through savings banks. § 143. Gives right of suing on allotment notes. § 144. Payment under allotment note to begin at expiration of one month, or through savings bank three months, of date of agreement.

§§ 145 to 154. “Seamen’s Money Orders and Savings Banks.” The provisions relate to remittances, money orders, power to pay when order is lost, penalty for issuing money orders with fraudulent intent; give power to Board of Trade to establish savings banks; deposits, expenses, accounts, etc., etc.

§§ 155 to 163. “Rights of Seamen in respect of Wages.” § 155. A seaman’s right to wages and provisions begins at the time when he commences work, or date specified in the agreement, whichever first happens. § 156. A seaman shall not by agreement forfeit his lien on ship, or be deprived of remedy to recover wages to which in the absence of agreement he would be entitled; and shall not abandon his right to wages in case of loss of ship, or right of salvage; every such stipulation inconsistent with the provisions of this Act shall be void. § 157. The right to wages shall not depend on earning of freight, and shall be entitled to recover wages due if freight has not been earned. § 158. Wages to cease on termination of service by wreck or illness. § 159. Wages not to accrue during refusal to work, or imprisonment. § 160. Wages

to cease during illness, when illness is caused by seaman's own default. § 162. A seaman improperly discharged may claim compensation. § 163. Provides that there shall be no arrestment or attachment of wages from any court, and imposes restriction upon any sale of or charge upon wages. Payment of wages to seaman or apprentice to be valid notwithstanding previous sale or assignment, or attachment, incumbrance, or arrestment thereof. This does not affect the provisions as to allotment notes. (§§ 140 to 144.)

§§ 164 to 167. "Mode of Recovering Wages." By summary proceedings, for amounts not exceeding £50, before a Court of Summary Jurisdiction, in or near the place where service terminated, or person was discharged, or at place where person claimed on resides. The order of the Court shall be final. Suit shall not be instituted in a superior Court for amount not exceeding £50. Provide as to recovery of wages abroad, and where in certain cases not recoverable, and give remedies to masters of ships in certain cases the same as to the seamen.

§ 168. Gives power to the Court to rescind contract between owner or master and seaman or apprentice, in addition to any other jurisdiction which the Court can exercise irrespective of this section.

§§ 169 to 181. Deal with the "property of deceased seamen" who may die during voyage; property left abroad but not on board ship; recovery of wages due of seamen lost with ship; property of seamen dying in United Kingdom; creditors; unclaimed property, etc.

§§ 182 and 183. Provide that relief to seamen's

families shall be chargeable on a certain proportion of their wages, with notice to owner, and enforcement of such charge.

§§ 184 and 185. Provide as to destitute seamen ; impose penalty on masters leaving certain seamen in distress in the United Kingdom ; and for the relief of destitute Lascars ; may be sent to their homes by Secretary of State for India.

§§ 186 to 189. Relate to the discharge of seamen in foreign countries ; penalty for forcing them on shore and leaving them behind. Account to be rendered of wages, etc., when left abroad by reason of sickness, or inability to proceed on the voyage.

§§ 190 to 194. The Board of Trade may make regulations as to the relief, maintenance, and sending home of distressed seamen abroad. Make provision as to the authorities who may act in foreign and colonial ports. Masters of ships may be compelled to take home distressed seamen, and may recover expenses for relief, etc., out of the Mercantile Marine Fund.

§§ 195 to 197. Provide as to volunteering into the Navy.

§§ 198 to 210. Make provision as to the health and accommodation of the crew, with respect to provisions and water, medicines, weights and measures, inspection of seamen, provisions and water of certain ships, expenses of medical attendance, recovery of expenses from owner, and accommodation for the seamen and apprentices on board.

§ 211. Provides " facilities for making complaint " by seaman or apprentice, against master or any of crew as soon as the service of the ship

will permit, to justice of the peace, consular officer, or officer in command of one of H.M.'s ships, at place where the ship then is, or on her first arrival. The master to allow complainant to go ashore, or send him in proper custody. Penalty for non-compliance with this section, a fine for each offence not exceeding £10.

§§ 212 to 219. Provide for the "protection of seamen from imposition" as regards share of salvage; no debt exceeding 5s. to be recoverable till end of voyage; seamen's lodging-houses; overcharges by lodging-house keepers; detaining seamen's effects; against solicitation by lodging-house keepers; for being on board ship without permission before the seamen leave; with penalties for offences, and application of these provisions to foreign ships.

§§ 220 to 238. Deal with discipline on board ship — misconduct endangering life or ship, desertion or absence without leave, conveyance of deserter, arrest and imprisonment, power of court, etc., etc. Offences to be entered in official log; summary remedies, penalties, forfeitures, etc.

§§ 239 to 243 pertain to official logs; §§ 244 and 245 to Local Marine Boards; §§ 246 to 250 to Mercantile Marine Offices; §§ 251 to 258 to registration of seamen, and returns of births and deaths in British ships, of the transfer or loss of ship, and the transmission or deposit of documents, etc.

§ 259. Provides for sites for Sailors' Homes; and §§ 260 to 266 relate to the application of this part of the Act. An unregistered ship is deemed to be registered in the United Kingdom for the purposes of this part of the Act.

Disputes as to Wages, etc., on the River Thames.—The Police Courts (Metropolis) Act, 1839 (the 2 & 3 Vict. c. 7), contains the following section, which is still in force, as to wages of bargemen and others, on the River Thames, docks, etc., of London.

Disputes about wages for labour done on the river, etc (except by Trinity ballast-men) to be settled by magistrates, etc.

§ 37. "All differences, complaints, and disputes which shall happen between any bargemen, lighter-men, watermen, ballast-men (except Trinity ballast-men), coal-whippers, coal porters, sailors, lumpers, riggers, shipwrights, caulkers, or other labourers who work for hire in or upon the River Thames, or the Docks, Creeks, Quays, or places adjacent, not being in the City of London or the Liberties thereof, and the owners, masters, or commanders of vessels, or their agents, on the said river, or the docks and creeks thereunto adjoining, or the wharfingers or occupiers of such wharfs or quays, or their agents or other employers, respecting wages or money due to such labourers for work or loss of time, whether the same persons be employed for any certain time or in any other manner, may be heard and determined by any of the said (Metropolitan) magistrates; and every such magistrate is hereby empowered to examine upon oath any such labourer aforesaid, or any other witness or witnesses touching any such complaint or dispute, and to make such order for payment of so much wages or money to such labourer as to the magistrate shall seem just, provided that the sum ordered do not exceed £5, besides all reasonable costs attending the prosecution of the complaint."

Although the above section is still in force, it does not appear to be often applied in matters of dispute by the parties for whose benefit it was intended.

Coal-heavers in the Port of London.—In the year 1758 an Act was passed—the 31 Geo. II. c. 76—“for the relief of the coal-heavers working upon the River Thames.” It was a Local Act, and provided among other things for the regulation of their wages, or, in the words of the title to the Act, “to regulate the price of their labour; to prevent frauds and impositions on such labourers; and for their further Relief.” That Act was repealed in 1770, by the 10 Geo. III. c. 53, because it “hath been found ineffectual to answer the good purposes thereby intended; and for want of due regulation in Payment of the Wages and Hire of the said Coal-heavers, being labourers employed in unloading ships laden with coals, great impositions and frauds have been committed by Coal-undertakers, being persons employed to procure Coal-heavers to unload such ships on the River Thames, whereby such Coal-heavers have been deprived of great part of the fruits of their labour,” etc. Certain sections were repealed from and after 24th June, 1770, and the remainder expired three years after such date. The frauds and impositions complained of were Truck, and sweating by gangers and sub-contractors.

Coal-whippers and Ballast-heavers: Port of London.—After the expiry of the before-mentioned Act no further legislation for the regulation of Coal-whippers appears to have taken place until 1831, when the Local Act, 1 & 2 Wm. IV. c. 76, was passed, “An Act for regulating the vend and delivery of Coals in the Cities of London and Westminster, and in certain parts of the Counties of Middlesex, Surrey, Kent, Essex, Hertfordshire,

Buckinghamshire, and Berkshire.” That Act was temporary, for seven years. It was continued by 1 & 2 Vict. c. 201; amended, and a Coal-whippers’ office established, by 6 & 7 Vict. c. 201; it was further continued until 1862 by 8 & 9 Vict. c. 191. By these Local Acts, coal-whippers were to be registered, and no person was to follow the calling of a coal-whipper unless registered and certificated, except crews of colliers and the actual servants or labourers of owner of ship, or purchaser of cargo. Commissioners were appointed who might provide tackle for discharging cargoes. By § 18 the quantity of coals to be discharged was to be stated in writing, the time within which to be discharged, and the rate per ton agreed to be paid for discharging. § 19 provided for mode of hiring by gangs, by tender, or otherwise. § 23 provided for payment of wages, § 24 for recovery of wages, and § 25 for distribution of amount of wages. The jurisdiction for carrying out the provisions of the Act was placed in the hands of the Justices of the Peace. The object of these Acts was to prevent Truck by taskmasters, often the keepers of beer-houses, and to ensure equitable distribution of amounts earned, and easy recovery of the wages of the workmen. The Acts ultimately expired, and the workmen named were placed under the Trinity House Corporation—hence the reference, in the preceding Act, to “Trinity House Ballast-men,” etc. The last-named Act was a Public Act.

CHAPTER XV.

ARBITRATION AND CONCILIATION IN LABOUR DISPUTES.

SOME kind of rough and ready mode of referring matters of dispute to arbitration existed under the old guild system. That method continued to exist wherever the Guild Ordinances had force in certain districts and trades down to nearly the close of last century, and where no formal authority existed, custom had to some extent taken its place. But there was little room for arbitration or conciliation in labour disputes, as we now understand those terms, inasmuch as the Justices fixed the rates of wages, and for the most part the hours of labour and general conditions of employment. As a matter of fact, legal "arbitrations" were first instituted in connection with the general statute law pertaining to commercial trading, and the common transactions of daily life, by the Judges referring certain matters to what we should call experts in the particular business so referred. This is evident from the preamble to, and the sections of, the 1 Jas. I. c. 10, passed in 1603. It is still more evident from the title and sections of the amending Act, 9 & 10 Wm. III. c. 15, "An Act

for determining Differences by Arbitration," passed in the session 1697-8. That Act provided for the enforcement of awards under penalty, by Rule of Court, etc. The preamble to the Act states that the mode of so determining controversies had contributed to the ease of the subject, etc. In so far as such legal arbitrations are concerned, the law has been amended from time to time, and is at present to be found in a complete form in the Consolidation Act of 1889 (the 52 & 53 Vict. c. 49), "An Act for Amending and Consolidating the Enactments relating to Arbitration."

The first Act apparently which applied the principle of arbitration to labour disputes was passed in 1701—the 1 Anne, St. II., c. 22. This Act provided in certain cases for the "woollen, linen, fustian, cotton, and iron manufactures," reference being made, in § 3, to arbitration before two Justices, to "prevent the oppression of the work-people, and ensure payment of wages in the current coin of the realm." This Act was for ten years only. It was revived and made perpetual in 1710 by 9 Anne, c. 30. The Act was extended to Ireland by 3 Geo. II. in 1716-17, and to Scotland in 1739-40, by 13 Geo. II. c. 8. In 1749 the provisions of the Act were extended to several other trades, the leather, fur, hemp, flax, mohair, and silk, and, as to wages, to dyers, hot-pressers, etc. In 1773 the 13 Geo. III. c. 68 was passed: "An Act to empower the Magistrates in London, Westminster, and Middlesex, to settle and regulate the wages of persons employed in the silk manufacture, within the said jurisdiction." This was the first of the Spitalfields Acts—extended in 1792 to materials

mixed with silk, by the 32 Geo. III. c. 44, amended in 1811 by 51 Geo. III. c. 7, which extended the provisions of the two first Acts so designated, to women. These three were called the "Spitalfields Acts."

In the year 1777 two Acts were passed, 17 Geo. III. c. 55, extending the provisions of the Acts of Anne and George II. to hat and cap making, and c. 56, providing that there should be no conviction in certain cases except before two Justices of the Peace. The provisions relating to Ireland were amended in 1795 by 36 Geo. III., in 1800 by 40 Geo. III., and in 1810 by 50 Geo. III.—Irish Acts. In 1800 was passed the 39 & 40 Geo. III. c. 90, "An Act for settling Disputes that may arise between masters and workmen engaged in the cotton manufacture, England." In the same year the Act of the year previous, 1799, relating to combinations was repealed, and a new Act was passed in lieu thereof. Incidentally those Acts related to disputes and modes of settlement. The Arbitration Act of 1800 (39 & 40 Geo. III.), c. 90, was amended in 1802–3 by 43 Geo. III. c. 151; in 1803–4 by 44 Geo. III. c. 87; in 1810, as to Ireland, by the 50 Geo. III. c. 27; in 1812–13, also as to Ireland, by the 53 Geo. III. c. 75; in 1815, as to stamp duties on Awards, by 55 Geo. III. c. 184. In 1824 the "Spitalfields Acts" and others of the above-named Acts were repealed by 5 Geo. IV. c. 66.

In that year, 1824, the 5 Geo. IV. c. 96 repealed all the other Acts or portions of Acts which were unrepealed, and substituted therefor "An Act to consolidate and amend the Laws relating to the

Arbitration of Disputes between Masters and Workmen." This is the principal Act still in force. Certain sections relating to procedure before the Justices were amended in 1833, and in 1837, by 1 Vict. c. 67, the Act of 1824 was amended. This Act is also in force. In 1839, bargemen and others on the River Thames were dealt with in § 37 of 2 & 3 Vict. c. 71; and in 1845, the 5 Geo. IV. c. 96 was further amended by 8 & 9 Vict. c. 128, as regards silk weavers, Tickets of Work, and in the same year, by c. 77, as regards hosiers, Tickets of Work, etc. In 1854 the Common Law Procedure Act (17 & 18 Vict. c. 125) amended the law as to awards in arbitration cases, but this Act referred rather to legal arbitrations of a general character—References by the Court.

In 1867 Lord St. Leonards' Act was passed (30 & 31 Vict. c. 105), "An Act to establish Equitable Councils of Conciliation to adjust Differences between Masters and Workmen." In 1872 the Arbitration Act, 1872, was passed (the 35 & 36 Vict. c. 46). Both of those Acts are still in force. To complete this historical summary of Acts it may be stated that the Supreme Court of Judicature Act, 1873, dealt with matters of arbitration, and also the amending Act of 1884. In 1889 the general law relating to arbitrations was consolidated, as before mentioned. The Merchant Shipping Act, 1880 (43 & 44 Vict. c. 16) contained some provisions as to apprentices, etc., now incorporated in the Consolidation Act of 1894. Provision is also made in the Friendly Societies Acts, Industrial and Provident Societies Acts, and in numerous other Acts for arbitration, so that the principle is widely recognised

as being valuable, and as tending to minimise litigation.

During the last fifty years there has been a growing sentiment in favour of conciliation and arbitration, and several attempts have been made to improve the law relating thereto as regards labour disputes. But, in so far as legal machinery is concerned, at least in its application, we are really no better off than we were in 1824. The general Acts in force are the 5 Geo. IV. c. 96, amended by 1 Vict. c. 67; one relating to bargemen and others on the River Thames (2 & 3 Vict. c. 71), § 37; Lord St. Leonards' Act, 1867; the 30 & 31 Vict. c. 105; and the 35 & 37 Vict. c. 46, the Arbitration Act, 1872. The provisions of the three first named Acts have not been enforced for half a century, and the provisions of the two last mentioned have never been put in force. Lord St. Leonards' Act, 1867, was carried at the instance of an association of workmen, supported by the London Trades Council at that date. But its machinery and methods are now out of date, and are not likely to be applied. Arbitration by Justices of the Peace is obsolete, and cannot be revived. The only Act which contains the germs of practical arbitration is the Act of 1872, carried at the instance of the Trades Union Congress; but even that Act has never been put in force.

Resolutions in favour of conciliation and arbitration have been passed at all, or nearly all, of the Trades Congresses, from 1868 to the present date. The principle is advocated by workmen, by employers, by social reformers of all grades, and by what is called the "public." Voluntary boards

of conciliation and arbitration exist and have done much during the past twenty-five years, and are still doing much to promote mutual arrangements between employers and workmen ; but there seems to be a desire for some mode of enforcing awards. The law provides no mode at present. The Act of 1872 is here given, together with the Memorandum and an analysis of the Act of 1824.

MASTERS AND WORKMEN (ARBITRATION) ACT.

[35 & 36 VICT., CH. 46.]

A.D. 1872. An Act to make further provision for Arbitration between
Masters and Workmen. [6th August, 1872.]

5 Geo. IV. Whereas by the Act 5 Geo. IV. c. 96, intituled "An
c. 96. Act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen," hereinafter referred to as the "principal Act," provision is made for the arbitration in a mode therein prescribed of certain disputes between masters and workmen :

And whereas it is expedient to make further provisions for arbitration between masters and workmen :

Be it enacted as follows :

As to
agreement
under this
Act.

I. The following provisions shall have effect with reference to an agreement under this Act :

- (1.) An agreement under this Act shall either designate some board, council, persons or person as arbitrators or arbitrator, or define the time and manner of appointment of arbitrators or of an arbitrator ; and shall designate, by name or by description of office or otherwise, some person to be, or some person or persons (other than the arbitrators or arbitrator) to appoint an umpire in case of disagreement between arbitrators :
- (2.) A master and a workman shall become mutually bound by an agreement under this Act (hereinafter referred to as "the agreement") upon the master or his agent giving to the workman and the workman accepting a printed copy of the agreement :

Provided that a workman may, within forty-
eight hours after the delivery to him of the agree-
ment, give notice to the master or his agent that
he will not be bound by the agreement, and there-
upon the agreement shall be of no effect as between
such workman and the master :

A.D. 1872.

- (3.) When a master and workman are bound by the agreement they shall continue so bound during the continuance of any contract of employment and service which is in force between them at the time of making the agreement, or in contemplation of which the agreement is made, and thereafter so long as they mutually consent from time to time to continue to employ and serve without having rescinded the agreement. Moreover, the agreement may provide that any number of days' notice, not exceeding six, of an intention on the part of the master or workman to cease to employ or be employed shall be required, and in that case the parties to the agreement shall continue bound by it respectively until the expiration of the required number of days after such notice has been given by either of the parties :
- (4.) The agreement may provide that the parties to it shall, during its continuance, be bound by any rules contained in the agreement, or to be made by the arbitrators, arbitrator, or umpire as to the rate of wages to be paid, or the hour or quantities of work to be performed, or the conditions or regulations under which work is to be done, and may specify penalties to be enforced by the arbitrators, arbitrator, or umpire for the breach of any such rule :
- (5.) The agreement may also provide that in case any of the following matters arise they shall be determined by the arbitrators or arbitrator, viz. :
 - a. Any such disagreement or dispute as is mentioned in the second section of the principal Act ; or

A.D.1872.
—

b. Any question, case, or matter to which the provisions of the Master and Servant Act, 1867, apply :

and thereupon in case any such matter arises between the parties while they are bound by the agreement the arbitrators, arbitrator, or umpire shall have jurisdiction for the hearing and determination thereof, and upon their or his hearing and determining the same no other proceeding shall be taken before any other court or person for the same matter ; but if the disagreement or dispute is not so heard and determined within twenty-one days from the time when it arose, the jurisdiction of the arbitrators, arbitrator, or umpire shall cease, unless the parties have, since the arising of the disagreement or dispute, consented in writing that it shall be exclusively determined by the arbitrators, arbitrator, or umpire :

A disagreement or dispute shall be deemed to arise at the time of the act or omission to which it relates :

- (6.) The arbitrators, arbitrator, or umpire may hear and determine any matter referred to them in such manner as they think fit, or as may be prescribed by the agreement :
- (7.) The agreement, and also any rules made by the arbitrators, arbitrator, or umpire in pursuance of its provisions, shall in all proceedings as well before them as in any court be evidence of the terms of the contract of employment and service between the parties bound by the agreement :
- (8.) The agreement shall be deemed to be an agreement within the meaning of the thirteenth section of the principal Act for all the purposes of that Act :
- (9.) If the agreement provides for the production or examination of any books, documents, or accounts, subject or not to any conditions as to the mode of their production or examination, the arbitrators, arbitrator, or umpire may require the production or examination (subject to any such conditions) of

any such books, documents, or accounts in the possession or control of any person summoned as a witness, and who is bound by the agreement, and the provisions of the principal Act, for compelling the attendance and submission of witnesses, shall apply for enforcing such production or examination.

II. This Act may be cited as "The Arbitration (Masters Short title. and Workmen) Act, 1872."

MEMORANDUM.

THE USES OF THE ACT.

Briefly stated, the uses of the Act are three, viz. :

1.—To provide the most simple machinery for a binding submission to arbitration, and for the proceedings therein.

2.—To extend facilities of arbitration to questions of wages, hours, and other conditions of labour, and also to all the numerous and important matters which may otherwise have to be determined by justices under the provisions of any existing Act.

3.—To provide for submission to arbitration of future disputes by anticipation, without waiting till the time when a dispute has actually arisen, and the parties are too much excited to agree upon arbitrators.

MODE OF PUTTING THE ACT IN OPERATION.

1.—A form of agreement must be drawn up and printed, either by the employer or by the workman. No particular form is obligatory ; and it may be varied to any extent not inconsistent with the provisions of the Act.

2.—When the form of agreement is settled and printed it will become binding on an employer and a workman reciprocally upon the employer giving to the workman—and the workman accepting—a printed copy. But the workman has forty-eight hours to consider and satisfy himself of the effect of the agreement, and if within that time he gives a written or verbal notice to the employer, or his agent, that

A.D.1872. he rejects it, he will not be bound by it. If after accepting the copy he does not give such notice, then both he and the employer will be bound by the agreement during the agreed term of employment (whether that term be a day, or a week, or a year), and no longer. The agreement, however, may itself provide that six days' notice shall be given of an intention to terminate the employment; and, in any case, upon an expiration of an agreement it may be renewed in the same manner as before.

3.—In case any dispute of a kind to which the agreement relates arises between the parties bound by it during the continuance of the agreement, the dispute will be heard and determined, not by the parties, but by the arbitrators in the mode prescribed by the agreement; or, if no mode is so prescribed, then at their discretion. The attendance of witnesses and the production of evidence may be enforced in the manner provided by the Arbitration Act of 1824 (5 Geo. IV. c. 96).

4.—The award of the arbitrators may be in the prescribed form; and it may be enforced in the manner provided by the Arbitration Act, 1824 (5 Geo. IV. c. 96), by distress, or imprisonment, and otherwise, or it may be enforced by plaint in the County Court.*

5.—An analysis is appended of the clauses of the Arbitration Act, 1824, which will be applicable for the purposes of this Act.

Analysis of the Arbitration Act, 1824 (5 Geo. IV. c. 96).
Sections applicable under the preceding Act—

§ 9.—Attendance of witnesses, summons, or commitment.

§ 23.—Acknowledgment of fulfilment of award.

§ 24–30.—Performance of award may be enforced.

§ 31.—Costs and expenses to be settled by the arbitrators.

§ 32.—Exemption from stamp duty.

§ 30–34.—Protection of arbitrators, etc., from actions.

* The original "Forms" are omitted, as any form agreed upon will do.

CHAPTER XVI.

THE COUNTY COURTS ACT, 1888.

[51 & 52 VICT., CH. 43.]

The County Court Rules and Forms, 1889 and 1892.

THE County Courts (Consolidation) Act was passed on the 13th day of August, 1888, and came into force on the 1st day of January, 1889, on which date also the Orders and Rules, entitled the "County Court Rules, 1889," also came into force, except as to fees, which came into force on February 1st, 1889. The County Court Rules, 1889, annulled those of 1886, the amended Orders and Rules being substituted therefor.

The "County Court Rules, 1892," were in lieu of certain Rules in the code of 1889, the number of the Order, and of the Rule, in each case being the same as that for which it was substituted in the Orders and Rules of 1889, and may be cited as if it had been one of the "County Court Rules, 1889," and had been numbered therein by the number of the Order and Rule placed in the margin opposite each of those Rules. The Forms were similarly treated as though they were contained in the Orders and Rules of 1889. As it is mainly intended to treat of the claims of employer and employed in this book, it will not be necessary to deal at length with the County Court Rules, 1889 and 1892,

except in so far as they affect disputes between workmen and their employers, and such other matters as are dealt with in this book.

The following appear to be the chief Orders and Rules having reference to or affecting any proceedings under the Employers and Workmen Act, 1875, the Employers' Liability Act, 1880, and the other Acts herein referred to, relating to workmen specifically or pertaining to them in the capacity of workmen, and to employers under the provisions of the several Acts, not otherwise given.

Abstract of principal Rules, with general references to others.

Court and officers.

ORDER I., *Rules 1 to 4.*—Relate to the sittings of court, notices, days on which registrar's office shall be open, and when closed by special or general order.

Officers :
the
registrar,
bailiff, etc.

ORDER II., *Rules 1 to 16.*—Relate to the duties of registrar, books to be kept, documents to be filed, issue of processes, summonses, service in foreign districts, copies of documents; particulars are to be annexed to summonses, payments into court, searches and payments out of court (amended by Rule 10A), acknowledgments of payments and deposits, production of court books to treasurer, officer of court not to act as agent to the parties, legacy and succession duties, one Judge acting for another, and custody of securities. *Rules 17 to 37* relate to the duties of High Bailiff — absence, keeping books, attendance, keeping open office, service of processes (amended by Rule 21A), endorsement of service on copy of summons, notice of non-service (amended by Rule 23A), notice of doubtful service to be given, service by bailiff of foreign court (amended by Rule 25A), return of to home court (amended by Rule 26A), delivery of list of ordinary summonses served, notice of service or non-service of default-summons, order book,

execution and entries of warrants, paying in moneys, holding the proceeds of execution for fourteen days under Bankruptcy Act, withdrawal of notice in cases of bankruptcy, non-execution of warrant in foreign district, as to sale of personal property, possession, where taken till security be given, with Forms and references to Acts. *Rule 38* relates to suing by a solicitor, what notices to be sent, etc.*

ORDER III., PARTIES GENERALLY.

1. "All persons may be joined as plaintiffs in Joint whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to any extra costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court in disposing of the costs of the action shall otherwise direct."

2. "All persons may be joined as defendants Joint against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative." In this case the provisions are similar to those in the last Rule. defendants.

3. "It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Judge or registrar may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceed-

* NOTE.—Where a letter follows the number of a Rule, thus: 9A, 9B, etc., it denotes that it is a new Rule, or amended Rule of a date subsequent to 1889. In some instances a Rule is annulled, no new Rule being substituted.

ings in such action in which he may have no interest."

4. "The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally, liable on any one contract." . . .

5. "Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties."

Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Judge may, at any stage of the proceedings, order any of such persons to be made parties to the action, either in addition to or in lieu of the previously existing parties thereto."

Where parties numerous, one or more may sue or be sued, or defend for the benefit of all. Where defendant desires to defend on behalf of others. Form 111.

7. "Where there are numerous persons having the same interest in one action or matter, one or more of such persons may sue or be sued, or may be authorised, at or before the trial, by the Judge or registrar to defend in such action or matter, on behalf or for the benefit of all parties so interested."

8. "Where a defendant desires to defend on behalf or for the benefit of others having the same interest, he shall within two clear days of the date of the service of the summons upon him give notice to the plaintiff of his intention to apply, upon a day and hour to be named in such notice, to the registrar for leave so to defend, and shall file an affidavit of the facts upon which he relies to obtain such leave, together with the names, addresses, and occupations of such persons, and the registrar may thereupon make an order for the

defendant so to defend, and shall add the names to that of the defendant in the plaint and minute book, and a copy of such order shall be personally served on each of such persons, and notice sent to the plaintiff according to Form 111. Provided that the plaintiff or any of the persons whose names have been so added may at the trial object to the defendant defending on behalf of all or any of the persons as to whom such order has been made, and the Judge may thereupon, if he think fit, strike the names of all or any of such persons out of the proceedings, and order the defendant to pay such costs as he shall think fit."

Persons under disability.—9. "Infants may sue Infants may sue. 51 & 52 Vict. c. 43, s. 96. as plaintiffs by their next friends, and may defend by their guardians appointed for that purpose, but nothing herein contained shall affect the right of any infant to sue as if he were of full age, in the cases enumerated in § 96 of the Act."

The section referred to enacts: "It shall be Minors may sue for wages. lawful for any person under the age of twenty-one years to prosecute any action in the Court for any sum of money not greater than £50 which may be due to him for wages or piece work, or for work as a servant, in the same manner as if he were of full age."—County Courts Act, 1888 (51 & 52 Vict. c. 43), § 96.

10. "In those cases to which the Married women. 45 & 46 Vict. c. 75. Married Women's Property Act, 1882, does not apply, a married woman may sue by her next friend; nevertheless, by leave of the Judge or registrar she may sue or defend without her husband and without a next friend, on giving such security, if any, for costs, as the Judge or registrar may require, and such leave may, in the discretion of the Judge or registrar, be given with or without the imposition of terms, at the trial, or at any time during the course of the action or matter."

11 and 12. Relate to suits by and against lunatics and persons of unsound mind.

Partners.—13, 14, 15, and 16 are annulled, and others are substituted by the amended Rules, 1892 (Nos. 6, 7, and 8), as follow :—

Co-part-
ners may
sue and be
sued in the
name of
their firm.

13A. “Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and in any such case on application by any party to the action, the registrar may order a statement of the names of the persons who were at the time of the accruing of the cause of action co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the registrar may direct.”

Applica-
tion for
names of
firm in an
action by
a firm.

14A. “Where an action is brought by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand made in writing by or on behalf of any defendant, forthwith send by post to the defendant so applying and to the registrar the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon application for that purpose, be stayed upon such terms as the Judge may direct, or the Judge at the trial may adjourn the hearing on such terms as he may think fit. And when the names of the partners are so declared, the action shall proceed in the same manner, and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the summons. But all the proceedings shall, nevertheless, continue in the name of the firm.”

Where
business
is carried
on by one
person.

16A. “Any person carrying on business in a name or style other than his own name may be sued in such name or style as if it were a firm name, and so far as the nature of the case will permit, all the provisions of these Rules relating to proceedings against firms shall apply.”

Administration and Execution of Trusts.—Rules 17 to 29 inclusive relate to heirs-at-law, next of kin, residuary legatees, co-heirs, and matters pertaining to trusts under deed or instrument, etc., and need not be further particularised here.

ORDER IV. JOINDER OF CAUSES OF ACTION.

1. "No cause of action shall, unless by leave of the Judge or registrar, be joined with an action for the recovery of land, except claims in respect of mesne profits, or arrears of rent, or double value in respect of the premises claimed, or any part thereof, or damages for breach of any contract under which the same or any part thereof are held, or for any wrong or injury to the premises claimed."

What claims may be joined with action for recovery of land.

2. "Claims by a trustee in bankruptcy as such shall not, unless by leave of the Judge or registrar, be joined with any claim by him in any other capacity."

Joinder of claims by trustee in bankruptcy.

3. "Subject to the two preceding Rules a plaintiff may unite in the same action several causes of action without leave of the Court."

Joinder of causes of action generally.

4. "Claims by or against husband and wife may be joined with claims by or against either of them separately."

Claims by husband and wife.

5. Refers to claims by or against an executor or administrator.

6. "Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant."

Joint and separate claims by plaintiffs.

7. "If at any time it appears, or is made to appear to the Judge that any causes of action united, or claims joined in any action cannot be conveniently tried and disposed of together, he may order separate trials, or may exclude any such cause of action or claim, and may order the proceedings to be amended accordingly, and may make such order as to costs as may be just."

Separate trials may be ordered

ORDER V. COMMENCEMENT OF ACTION.

Actions to
be com-
menced
by plaintiff.
Forms
6 and 7.

Trials by
agreement.
51 & 52
Vict. c. 43,
s. 64.

1. "All proceedings authorised to be commenced in a County Court by or under the Act shall, except where otherwise provided by the Act or by these Rules, be commenced by the entry of a plaintiff and shall be called actions."

2. "Where the parties, in pursuance of § 64 of the Act, agree to try any action in the County Court, a plaintiff shall be entered and a summons shall be issued thereon, as in other cases, and all the rules and practice of the Court shall apply in such cases, so far as the same are applicable. The plaintiff on entering the plaintiff shall file with the registrar the memorandum of consent required by the statute." (§ 64 of the County Courts Act, 1888, provides that a case may be tried in the County Court, if the parties so agree, instead of in the High Court, Queen's Bench Division.)

3. This Rule refers to actions to recover possession of a tenement, and for recovery of land, under 51 & 52 Vict. c. 43, §§ 59, 138, and 139, and need not be reproduced here.

Entry of
plaint.

4A. "No plaintiff shall be entered without the party desiring to enter the same filing a præcipe* for that purpose; such præcipe shall contain (a) the Christian and surname, description, and residence or place of business of the plaintiff, (b) the surname, and, subject to the provisions of Rule 9A of this Order, the residence or place of business of the defendant, and (where known) his Christian name and description, the number of his house or place of business, and the name of the street in which it is situate, (c) where the defendant's Christian name is not known, a statement whether the defendant is a male or female, and whether, if a female, she is

* A præcipe is a form handed to the proper officer of the court directing him to issue a summons or other process, and giving the necessary particulars.

married or single, (*d*) a short statement of the cause of action, or remedy or relief sought, and the amount of the debt or damages claimed: Provided that where the intended plaintiff is illiterate and unable to furnish the required information in writing, such præcipe shall be filled up by the registrar's clerk. If the plaint be entered by a solicitor, he shall state in such præcipe his name and place of business."

5. "If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, it shall be stated in the præcipe and particulars in what capacity the plaintiff sues or the defendant is sued."

6. "Where the issue of a default summons is desired, and the plaintiff or his solicitor wishes the same to be served otherwise than by the bailiff, he shall so request in the præcipe required to be filed before the entering of the plaint."

7. "When it shall appear, on an application for the entry of a plaint, that the plaintiff does not reside in England or Wales, the summons shall not be issued until security for costs, by deposit of money or otherwise, shall have been given to the satisfaction of the registrar." . . . Provides that an undertaking by the solicitor shall be sufficient.

8. Where a person desires to enter a plaint in a Court within the district of which he does not reside, he may, instead of attending in person or by agent at the Court, transmit free of cost to the registrar thereof:

(1) A præcipe containing the information required to be given under Rule 4 of this Order, and where the claim exceeds forty shillings, as many copies of the particulars of his demand or cause of action as there are defendants, and an additional copy to file.

(2) A post-office order for the fees due upon the entry of the plaint payable to the registrar

Capacity in which plaintiff sues or defendant is sued to be stated in præcipe. Default summons, service of.

Under-taking security for costs.

Entry of plaint by letter.

at the post-office of the town or place in which the Court is held.

- (3) An envelope addressed to himself, with a penny postage stamp thereon.

And upon the receipt of the above the registrar shall enter the plaint, and forward the plaint note to the plaintiff in the addressed envelope. For the purposes of this Rule the several districts of the Metropolitan Courts shall be considered *inter se* as one district only.

9A. Provides for leave to enter a plaint under § 74 of the County Courts Act, 1888, where the defendant resides in another district; the plaintiff must file an affidavit as to the facts, whereupon the Judge or registrar may exercise discretion as to granting or refusing leave. In case leave be granted defendant must be served personally.

Summons
not to
issue in
certain
cases.

10. Provides that where leave is required for the issue of a default summons, under § 86 of the County Courts Act, 1888, "no leave shall be given unless the occupation and description of the defendant shall be fully set forth in the affidavit; and no such leave shall be given in cases where in the affidavit it appears that the defendant is a domestic or menial servant, a labourer, a servant in husbandry, a journeyman, an artificer, a handicraftsman, a miner, or any person engaged in manual labour."

11. Provides for "infant suing," otherwise than for wages, or piece work, or for work as a servant; not necessary to be quoted.

Married
women
suing.
46 & 47
Vict. c. 75.

12. "Where a plaint is entered by a married woman in which her husband shall not be joined, she shall state the name, and so far as she can, the address and description of her husband; and, except in those cases to which the Married Women's Property Act, 1882, applies, she shall, unless the Judge or registrar shall otherwise order, also procure the attendance of a next friend, who shall give the same undertaking and incur the same liability as the next friend of an infant plaintiff."

13. "Where the plaintiff requiring a default summons does not desire the order upon the judgment to be for payment forthwith, he may at the time of the entry of the plaint file a notice . . . of the time or times, and instalments, if any, at or by which he consents to accept payment, together with as many copies as there are defendants." Practice where plaintiff does not require payment forthwith.
 Copy of such notice to be annexed to the summons, and served therewith—or he may give notice to registrar of like effect at the time of entering up judgment.

ORDER VI. PARTICULARS AND STATEMENT OF CLAIM.

1A. "Subject to the provisions of these Rules, the plaintiff shall at the time of the entry of the plaint in every action file particulars of his claim or demand, in which he shall specify the cause of action in respect of which the action is brought, as well as the pecuniary or other claim which he seeks to establish; but this Rule shall not apply where the action is brought by ordinary summons for debt or damages only, and the same do not exceed 40s. Where the claim or demand exceeds £50, and the plaintiff desires to abandon the excess, the abandonment of the excess shall be entered at the end of the particulars." Particulars to be filed.

2. "In all cases in which the plaintiff in the first instance desires to have an account taken, the particulars shall contain a claim that such account be taken." Particulars in cases of account.

3. In all cases where the assignee of any debt or other legal chose in action sues, he shall state on his particulars the name and description of the assignor. Particulars where assignee suing.

4. Deals with actions for the recovery of land;
 5. with actions under § 60 of the Act, which gives jurisdiction where neither the value nor the rent exceeds £50 (51 & 52 Vict. c. 43, § 60); 6. with the administration of the estate of a deceased

person, or execution of a trust—specific questions that may be put, etc.

Particulars where more than one cause of action.

7. "Where the plaintiff seeks to obtain payment or satisfaction, or relief, redress, or remedy upon more than one cause of action or claim, he shall state in his particulars the grounds of each claim separately, and shall also state separately the payment or satisfaction, relief, redress, or remedy he claims in respect of each."

Notice by defendant for further particulars may be given.

8. "In all actions the defendant may, at any time not later than five clear days before the return day, give notice to the plaintiff that he requires further particulars, and the plaintiff shall, within two clear days of service of such notice, file full particulars of his claim, and of the relief or remedy to which he claims to be entitled, and within the same time shall deliver to the defendant a copy thereof. If the plaintiff fails to comply with such notice, or complies therewith insufficiently, the Court, before or at the trial, if satisfied that the defendant is thereby prejudiced in his defence, may order the plaintiff to file and deliver full particulars, and may adjourn the action, and stay all proceedings thereon until such order has been complied with, and may make such order as to costs as he may think fit."

9. Fractions of a penny not entered, nor judgment given therefor.

10A. Where plaintiff sues by a solicitor, the particulars shall be properly signed by him, and also as to service, or costs will not be allowed.

ORDER VII. PLAINT NOTE AND SUMMONS.

Plaint note.
Forms 7,
8, and 9.

1. "At the time of entering the plaint, the registrar shall give to the plaintiff, or his solicitor or agent, a note under the seal of the court, according to the Forms in the Appendix. In the event of such note being lost or destroyed, a duplicate thereof may be given from time to time to the plaintiff, or his agent duly authorised in

that behalf, upon proof by affidavit or otherwise, to the satisfaction of the registrar, that the person applying is the plaintiff, or his agent authorised in that behalf, and that he is entitled to the money paid into court to his credit."

2. *Summons on Plaint*.—"Summonses to appear to a plaint shall be according to the Forms in the Appendix, and shall be dated of the day in which the plaint was entered, and the date thereof shall be the commencement of the action."

Date of
summons.
Forms 11,
16, and 17.

3A. "Where leave is granted under the provisions of § 74 of the Act to issue either an ordinary or default summons for service out of the district, the copy affidavit mentioned in *Order V., Rule 9A*, with a copy thereon of the order granting leave, shall be annexed to the summons and served therewith."

Where
issued by
leave.
Form 14A.

4. "In all cases the particulars where required to be filed shall be annexed to the summons before service, and shall be deemed to be part thereof."

Particu-
lars to be
deemed
part of the
summons.

5. *Ordinary Summons and Service*.—"An ordinary summons may be returnable either at the court for which the plaints are then being entered, or at the request of the plaintiff at any subsequent court."

Ordinary
summons,
when re-
turnable.

6. "Where an ordinary summons has not been served, successive summonses may be issued without entering a new plaint, unless the non-service has been caused by the fact of the plaintiff having mis-stated the name of the defendant or having given a wrong or insufficient address, or of the defendant having, before the entry of the plaint, removed from the address given on the entry of the plaint; but if the bailiff shall ascertain a sufficient time before the return day that the defendant has removed to some other place within the district of the court he shall serve the summons at such other place, endorsing on the copy thereof the new address." Successive summonses to bear same date and number as first, and to be continuance thereof,

Successive
sum-
monses.

but none to be issued after expiration of three months.

7. Summons to recover land (under § 59 of the County Courts Act, 1888) should be delivered to bailiff forty clear days before the return day.

Delivery
and service
of sum-
mons.

8. An ordinary summons to appear to a plaintiff (except in an action to recover land), to ensure service in the home district, to be delivered to the bailiff at least twelve clear days, in a foreign district fifteen clear days, before the return day—it must be served at least ten clear days before the return day. Upon evidence by affidavit that defendant was about to remove out of jurisdiction of the court, the summons may be served at any time before the return day, and such service shall be good if the Judge, at the hearing, is satisfied with the fact.

Mode of
service of
an ordi-
nary sum-
mons.

9A. Service of ordinary summons may be effected by delivering same to defendant personally, or to some person, apparently not under sixteen years of age, at the house or place of dwelling, or place of business of defendant, or by other service prescribed by the Rules of this Order, or under an order for substituted service as prescribed by Order 51, Rule 6. "Place of business" here means the place of business where defendant is master, or one of the masters thereof.

9B. Provides that where summons is left with a person not less than sixteen years old, etc., and defendant does not appear, the action shall not proceed if the Court is satisfied that service of such summons did not come to the knowledge of defendant before the return day. The Court may adjourn action, strike it out, or order a successive summons to issue, as may seem just.

9c. Service on authorised solicitor to be deemed sufficient if said solicitor endorses copy of summons that he accepts service.

10. Provides for service on infant, father, guardian, etc., and 11. for service on lunatic—person in charge, etc.

12A. Where persons are sued as partners in name of firm, summons may be served either upon one or more of them, or at the principal place of partnership business in England or Wales upon any person appearing to have control or management, and, subject to these Rules, such service shall be deemed good on the firm so sued. In case of co-partnership which had been dissolved to the knowledge of plaintiff before action, the service to be upon every person sought to be made liable.

13A. Provides for service of summons where person carries on business in name or style of firm—may be served at principal place of business upon person appearing to have control or management of business; such service, if sufficient in other respects, to be deemed to be good.

14. Where husband and wife are both defendants, both shall be served, unless Judge or registrar otherwise order.

15. Relates to service where defendant is on board ship; 16. to service on soldier or marine; and 17. to service on prisoner.

18. "Where defendant is working in any mine or other works underground, it shall be sufficient service to deliver the summons at the mine or works, to the engine-man, banksman, or other person apparently in charge of the mine or works."

19. Relates to service where defendant is employed in a public asylum or prison;

20. Where defendant keeps his house or place of business closed to prevent service by bailiff, it is sufficient to affix such summons on door of house, dwelling, or place of business.

21. Relates to service in action to recover land in case of vacant possession.

22. Where service by bailiff is prevented by violence or threats of defendant or person in concert with him, it shall be sufficient service to leave summons as near to the defendant as practicable.

23. Provides for service, in the absence of statutory provision, upon a Corporation.

24. Service on a railway company to be by delivery of summons to secretary, station master, or clerk, at any station or office of the company within the court district.

25. Is annulled. 26. Where summons has come to the knowledge of defendant less than ten days before the return day, the action may proceed or be adjourned at the discretion of the Court, whether defendant appears or not.

27. Where summons shall issue under § 84 of the Act (London district) it shall be served by bailiff of district in which defendant dwells or carries on business, unless the Judge shall otherwise specially order. This Rule does not interfere with general power of bailiff to serve the same within five hundred yards of the boundary of his district. 28. Annulled.

Default Summons and Service. — 29. Default summonses shall be personally served within twelve months of their date. If defendant is not served the plaintiff may, before expiry of twelve months, apply to registrar, who, if satisfied that reasonable efforts have been made to serve such defendant, or that there is some other good reason why service was delayed, may issue a successive summons for a further period of twelve months, and so on from time to time.

29A. Service of default summons on a firm is deemed to be sufficient if served personally on any one of the partners.

30. A default summons may be served in any district in which the defendant may be met by (a) a bailiff of a court, and when so requested on entry of plaint (Order V., Rule 6) by (b) the plaintiff or some clerk or servant in his permanent and exclusive employ; (c) the plaintiff's solicitor, or solicitor acting as agent for such, or some person in the employ of either of them. If in any case in

which no request has been made at entry of plaint (Order V., Rule 6) any difficulty is experienced by the bailiff in effecting service, the summons may by leave of the registrar be served by the plaintiff or some clerk or servant in his permanent and exclusive employ, or by the plaintiff's solicitor or agent of such, or person in the employ of either of them.

31A. Where service of summons is made otherwise than by the bailiff, or where an order to proceed as if personal service had been effected, the plaintiff shall within three clear days file in the court issuing summons, a copy thereof, with an affidavit of service (Form 21), or the original order for leave to proceed, as if personal service had been effected (Form 32). This Rule does not apply if defendant has given notice of defence or admission of the debt, within the three days alluded to.

32. Where default summons has not been returned to the registrar within one year of its date, it shall be struck out of the plaint-book unless the time for its service has been extended.

33A. Time for signing judgment by default is limited to two months from date of service.

34. Provides for cases of death of either party after service of summons—proceedings in certain cases may be taken by or against the surviving party.

35. Default summons may be exchanged for ordinary summons.

36. Provides for substituted service under the Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67; but now see 46 & 47 Vict. c. 49).

CONSOLIDATION OF ACTIONS, OR STAY OF PROCEEDINGS.

Order VIII.—1. “Where several actions shall be brought by the same plaintiff against the same

defendant in the same court for or in respect of different causes of action, which might in accordance with the provisions of Order 4 have been joined in one action, the defendant shall be at liberty to apply to the Judge that the said actions may be consolidated." (See Form 116.)

2. "Where several actions shall be brought by different plaintiffs against the same defendant in the same court for or in respect of causes of action arising out of the same breach of contract, wrong or other circumstances, the defendant may, on filing an undertaking to be bound so far as his liability in the said several actions is concerned by the decision in such one of the said actions as may be selected by the Judge, apply to the Judge for an order to stay the proceedings in the actions other than in the one selected, until judgment is given in such selected action." (See Forms 117 and 118 respectively.)

3. "Applications under the two preceding Rules shall be made upon notice to the plaintiffs to be affected by any order made thereon."

4. "Upon the hearing of any application for consolidation of actions, or for stay of proceedings, the Judge shall have power to impose such terms and conditions, and make such order in the matter as may be just."

5. "In case a judgment in a selected action under Rule 2 of the Order shall be given in favour of the defendant, the defendant shall be entitled to his costs up to the date of the order staying proceedings against every other plaintiff whose action is stayed, unless such plaintiff shall give the registrar, within one month from such judgment, written notice to set down his action for hearing, which, on receipt of such notice, the registrar shall forthwith do, and give notice thereof to the plaintiff and defendant."

6. "In case a judgment in a selected action shall be given against the defendant, the plaintiffs in

the actions stayed shall be at liberty to proceed for the purpose of ascertaining and recovering their debts or damages and costs."

7. "Where several actions of contract shall be brought by the same plaintiff against several defendants in the same court, and the event of the said actions depends on the finding of the Judge or jury on some question common to all the said actions, the Judge may at any time select one of such actions for trial, and stay the proceedings in all the other actions until the judgment in the action so selected shall have been given; but unless after judgment in such selected action, the plaintiff and defendants in the other actions, or any of them, shall submit to have judgment passed and entered therein, in accordance with the judgment in the action so selected, the other actions shall proceed in the same manner as if they had not been stayed, and the registrar shall appoint days for the trial of every such action, and shall issue a notice thereof to any plaintiff or defendant applying, together with as many sealed copies as there are parties to be served, and such plaintiff or defendant shall, eight clear days before the day fixed for the trial, serve the same upon all the other parties to the actions."

8. "Where actions shall be commenced in different courts by parties in the same interest, upon application by any of the parties they shall be transferred to the court in which the first plaint was entered, and shall there be proceeded with in the same way in all respects as if they had been commenced in that court."

ORDER IX. DISCONTINUANCE OF ACTION, CONFESSION, ADMISSION, ETC.

1. If plaintiff desires to discontinue the action, he must give written notice to the registrar and to each party as to whom he desires discontinuance

(Form 47). After receipt of notice, the party may apply *ex parte* for an order for costs.

2. Confessions under § 98 of the Act must be delivered to the registrar five clear days before return day (Form 39); or defendant may admit claim, etc., according to form, at any time before the action is called on, subject to costs.

3. In cases of consent under § 99 of the Act, defendant may confess amount of plaintiff's costs (Form 43) and court fees, and judgment may be entered accordingly.

4. Admission of truth of plaintiff's statement must be (Form 45) verified by affidavit (Form 46), unless signed in presence of a registrar, or one of his clerks. Such admission must be filed five clear days before return day. Notice must be sent by registrar to plaintiff or his solicitor. Plaintiff not allowed costs after service of notice, unless by order of the Judge, except as to attending on day of trial to enter up judgment and tax costs.

5. Any party to an action may give notice in writing to the other party admitting the truth of the whole or any part of case or claim; no costs allowed after receipt of such notice in respect of proof of matters admitted; but costs of steps prior thereto may be allowed if the registrar thinks fit.

6. Relates to confession by defendant in an action to recover land (Forms 219, 237, and 238).

7. Any party may, by notice in writing (Form 92) not later than six clear days before return day, call upon other party to admit, for the purposes of the action or issue only, any specific facts mentioned in the notice. In case of neglect or refusal to admit same, by written admission (Form 93) signed, etc., within three clear days before return, the costs of proving such facts shall be paid by party refusing, unless the Court otherwise directs. The admission may be amended or withdrawn, by leave of the Judge.

8. Affidavit to be evidence of admission, if evidence thereof is required.

9 and 10. Relate to action for the partition of land (31 & 32 Vict. c. 40, § 4).

11. Payments into court to be made five clear days before return day. Every such payment shall be taken to admit the claim, etc., unless defendant file with the registrar a notice denying liability (Form 104A). Except where money is paid into court under a defence of tender, defendant must also pay court fees, etc. Notice of such payment to be sent by registrar to plaintiff (Form 103). (51 & 52 Vict. c. 43, § 107.)

12. Acceptance by plaintiff of amount paid in as satisfaction of claim (Form 104), to abate action, and costs to cease. But in default of notice the action may proceed.

13. Relates to payment into court in an action for libel under § 2 of 6 & 7 Vict. c. 96.

14. Where payment is made after notice of defence is given, under § 86 of the Act, and the plaintiff accepts the amount, costs to cease. But where notice of trial has been issued, the Court may order certain further costs and expenses to be paid forthwith.

15. Plaintiff may, in answer to a counter-claim, pay money into court in satisfaction thereof, subject to like conditions as to costs, etc., as upon payment into court by defendant.

16A. Relates to court fees to be paid, where defendant pays into court the amount admitted, after deducting amount claimed as a set-off or counter-claim.

17. Where defendant pays money into court, in order to rely upon defence of tender, the amount shall be retained until after judgment, and any costs awarded to defendant shall be deducted therefrom.

17A. Where defendant pays into court a less sum than claimed, and denies liability, the amount

shall not be paid out until after judgment, unless plaintiff accepts same in full satisfaction.

18. Relates to payment of money out of court on production of plaint note or summons; 19 to payment by cheque or post-office order; 20 to cases where Rules of this Order do not apply; 21 to payments into court, and investment of money in cases where awarded to, or recovered by infant or person of unsound mind; and 22A to payment out of money paid in, or invested under the last preceding Rule.

ORDER X. SPECIAL DEFENCES.

1. Where plaintiff sues on behalf of, or for the benefit of others having the same interest, the defendant may avail himself of any defence in respect of each of such persons which he would have had against any of them if they or he had been plaintiff.

2. A defendant may set-off, or set up by way of counter-claim any right or claim, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and the cross claim.

3. Where plaintiff objects in writing, under § 18 of the Supreme Court of Judicature Act, 1884, to the Court giving any relief on such counter-claim, he shall give notice in writing to the registrar and defendant (Form 101) of his objection within two clear days after receipt of notice of counter-claim. The plaintiff may, at the time of notice of objection, give notice that he will, on the day of trial, apply to the Judge to adjudicate upon the original claim (if not admitted), subject to such order as the Judge may make for the stay of execution or otherwise in reference to such original claim.

4 and 5. Relate to actions for the recovery of land (Forms 17 and 18).

6. A defendant may object to the jurisdiction of the Court (§ 62 of Act) upon giving notice in writing to the registrar and to the plaintiff five clear days before the return day, by post or otherwise (Forms 15 or 99), and shall name the parties whom he proposes as sureties, or state willingness to deposit money in lieu of security. If he fail to give such security or deposit the money before the return day, or fail to give notice of his intention to object as aforesaid (Form 100), he shall not be entitled to object to the action being tried in the court. He shall also, after giving such notice, apply *ex parte* to the Judge on affidavit for his certificate that in his opinion some important question of law or fact is likely to arise in the action, and if the certificate is granted, notice thereof shall be sent by the registrar to the plaintiff by post or otherwise. The affidavit shall specify any important question of law or fact likely to arise in the action; in the case of a question of law shall further specify the facts which are relied upon as likely to raise such question.

7. Where a plaintiff avails himself of § 97 of the Act, and does not proceed against all of several persons jointly answerable, every defendant sued may avail himself of any defence or counter-claim to which he would have been entitled if all the persons liable were made defendants.

8. Where any person has been improperly or unnecessarily joined as co-plaintiff, and defendant has set up a set-off or counter-claim, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or in any proceeding consequent thereon.

9. Defendant may file statement disclaiming any interest in the subject-matter of action, or admitting or denying any statements in plaintiff's particulars, or raising any questions of law on such state-

ments without admitting the truth thereof; or he may state concisely any new fact or document upon which he intends to rely as a defence or bring to the notice of the Court; a copy thereof shall be transmitted by the registrar to the plaintiff (Form 98). In awarding costs, the Judge to consider the fact of the defendant having or not having availed himself of the powers given by this Rule—which shall also apply to a plaintiff who is defendant by counter-claim.

10. Where the defendant intends to rely upon any grounds of special defence or upon any counter-claim, he shall file a notice stating thereon his name and address, together with a concise statement of such grounds, five clear days before the return day; copy thereof to be sent by the registrar to the plaintiff (Form 95). In case of non-compliance with the Rules, and plaintiff not consenting at the trial to permit defendant to avail himself of such defence, the Judge may, on such terms as he may think fit, adjourn the trial to enable the defendant to give such notice.

11. Where defendant intends to rely upon a set-off or counter-claim against any of plaintiff's claims, his statement shall contain particulars thereof (Form 94).

12. If the defence be that of infancy, statement shall set forth the place and date of birth, so far as he is able.

13. If the defence be coverture, the female defendant shall set forth, so far as able, the place and date of marriage, Christian and surname of husband, and his address and description so far as known.

14. If the defence be the Statute of Limitations, he shall specify date from which he alleges that the statute began to run.

15. If defence be release under bankruptcy, etc., he shall set forth date of certificate, discharge, or final order, and the Court by which either of them was made.

16. In an action for libel, if defendant relies upon defence that the libel or slander is true, he shall set forth in his statement that it is true in substance.

17. If facts are relied upon in mitigation of damages, he must give particulars of the matters as to which he intends to give evidence.

18A. Where defendant relies upon any statutory defence or defence of which he is required by statute to give notice, he shall set forth the year, chapter, and section of the statute or the short title thereof, and the particular matter upon which he relies.

19. Where defendant claims equitable relief, he shall show concisely the circumstances that gave rise to such defence, and set forth separately each of the grounds of equitable defence.

20. Where the defence is a tender, it shall not be available unless, at the time of filing notice of such defence, defendant pays into court the amount alleged to have been tendered.

21. In notices of defence to counter-claim, notice thereof shall be filed according to the Rules. Rule 10 to apply, except that the time for giving notice shall not apply unless plaintiff, after receipt of notice of counter-claim, had he used reasonable expedition, might have filed his notice five clear days before the return day.

22. Where defendant's counter-claim affects other person, he may apply to the Judge to add the name of such person as a party to the counter-claim.

ORDER XI. CLAIM FOR CONTRIBUTION, INDEMNITY, ETC.

1. Provides that where defendant claims contribution or indemnity from person not a party to the action, he must, five clear days before the trial, file notice of claim, to be delivered to defendant with particulars, etc. (Form 105).

2. If person so served makes default in appearing, he is to be deemed to have admitted the validity of the judgment, and his own liability to contribute or indemnify, etc.

3. Relates to applications to the Judge for directions as to conduct of action, etc.; and 4 to questions of costs—Judge shall decide.

5. Where defendant claims to be entitled to contribution or indemnity against any other defendant in the action, notice to be issued, and same procedure as in case of third party.

ORDER XII. INTERLOCUTORY AND INTERIM ORDERS AND PROCEEDINGS.

Where defence is an alleged right to be relieved of a *prima facie* case of liability

1. When by any contract a *prima facie* case of liability is established, and there is alleged as a matter of defence a right to be relieved wholly or partially from such liability, the Judge, or in his absence the registrar, may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured.

2. Deals with the sale of perishable articles; 3 with the detention, preservation, and inspection of property, etc.; 4 with evidence, measure, weight, etc., of property; 5 with injunction, receiver, accounts, etc.; 6 with the recovery of specific property other than land. 7. Draft of all orders under two last Rules to be settled by registrar; and draft so prepared to be approved by the Judge. 8. Registrar to seal and file such order and issue copy for service. 9. Deposit may be ordered where defendant resides twenty miles from the court. 10. Judge may at any stage of the action make order for inquiries or accounts. 11A. Practice on interlocutory application is technical. 12. Judge or registrar may postpone trial

upon joint application of both parties. 13. Relates to postponement in consequence of interlocutory proceedings; 14 to postponement for other reasons; 15 to adjournment for non-compliance with Rules.

ORDER XIII. RECEIVER.

1. Receiver may be appointed, though not asked for on plaint. 2. Every receiver to give security for faithful discharge of his duties. 3. His accounts to be audited. 4. To produce vouchers. 5. Accounts may be ordered to be audited at any time. 6. At intervals of not less than one year. 7. Attendance of party not required at audit. 8. Court may order receiver to pay over moneys received to parties. The necessary Forms in each case are given.

ORDER XIV. AMENDMENT.

1. Where an action has been commenced in the name of the wrong person as plaintiff or otherwise, etc., the Judge, if satisfied that it was a *bonâ fide* mistake, may order such other person to be substituted or added as plaintiff, upon such terms as to notice and otherwise as may be just.

2. No action or matter to be defeated by misjoinder or non-joinder of parties; the Judge or registrar may in every case deal with the matter in dispute in so far as regards the rights and interests of the parties before him.

3. Where it appears at the trial that fewer persons are made plaintiffs than by law required, the Judge may add the name of the omitted person at the instance of either party.

4. Provides for the change of defendant in certain cases.

5. Where a party sues or is sued in a representative character wrongly, the Judge may, at the instance of either party, amend the proceedings.

6. Where party ought to have been sued in a representative character, as trustee or otherwise, instead of in his own right, the Judge may amend the proceedings accordingly.

7. Where the name or description of plaintiff in the summons is insufficient or incorrect, the Judge may amend the same.

8. Where the name or description of defendant in a summons is insufficient or incorrect, the Judge may amend the same.

9. Improper joinder or omission of husband or wife in an action by or against a husband may be amended by the Judge at the trial.

10. Where all the defendants have not been served, the names of those not served may be struck out by order of the Judge.

11. Applications to add or strike out parties may be made before trial to the Judge or registrar, or at the trial to the Judge.

12. Where defendant is added or substituted, a copy of the order and a notice to attend the court to be served on such person as in case of ordinary summons.

13. Plaintiff may file and deliver amended particulars of demand, and defendant an amended notice of particulars of special defence, at any time before the return day, without order for that purpose; but the Judge at the trial may disallow the amendment, or adjourn the trial, and make order as to costs, if the opposite party had not a reasonable opportunity of preparing his case.

14. In certain cases (under 51 & 52 Vict. c. 43, §§ 90 and 92), the registrar may amend the proceedings in any action, the same as the Judge.

ORDER XV. APPLICATION FOR DIRECTIONS.

1. Any party may apply to the Judge or registrar for postponement of trial, and for general directions as to particulars of claim or counter-

claim, special defence, payment into court, discovery and interrogatories, examination of witnesses before trial, mode of trial, and other matters; and the Judge or registrar, if satisfied, may order accordingly.

2. Notice of application (as above) must be given to every party three clear days, stating the matters to be dealt with by the Judge or registrar.

3. Upon hearing the application any party served with notice may apply for order or directions as to matters or proceedings, and the Judge or registrar may make order, etc., accordingly.

4. Provides that the costs of application for matters which could have been included in the general directions, may be granted to party aggrieved.

5. If day of trial is not fixed, any party may apply to have action set down for trial, upon giving three clear days' notice.

6. Provides that notice of day of trial shall be given, and the parties be served eight clear days before the trial.

ORDER XVI. DISCOVERY AND INSPECTION.

1. The Judge or registrar may grant leave to any party to deliver interrogatories in writing to any one or more of opposite parties for examination. Such interrogatories must be relevant.

2. The order will be drawn up by the registrar, specifying therein time within which the interrogatories must be delivered and answer filed.

3. Judge or registrar may take into account any offer made to supply particulars, make admissions, or produce documents, etc.

4. In adjusting the costs of action, the Judge shall consider improper, vexatious, or lengthy interrogatories, and determine accordingly.

5. Interrogatories to be in the required form (Form 84).

6. In the case of corporate bodies and joint-stock companies, leave may be given to deliver interrogatories to any member or officer thereof.

7. Objections to answer interrogatories may be taken in the affidavit in answer.

8. Interrogatories must be answered by affidavit (Form 85), which shall be filed, and costs delivered to party within the prescribed time.

9. The Judge may order further answer by affidavit, or *vivâ voce* examination (Form 86).

10. The Judge or registrar may order discovery of documents (Form 81).

11. Any objection to discover documents must be made by affidavit, filed, a copy of which must be delivered to party who obtains order (Form 82).

12. The Judge or registrar may order production of documents (Form 87).

13. Every party is entitled by notice in writing to require an inspection of any document mentioned in the particulars, notices, or affidavits of any other party; and in case of non-compliance the document cannot be put in evidence unless the Judge is satisfied that there was sufficient cause or excuse (Form 88).

14. Notice to produce such documents to be in Form 88.

15. The time is prescribed within which inspection shall be given in certain cases, or of objection to produce (Form 89).

16. If party served with notice omits to give notice of time for inspection, the Judge or registrar may make order, etc. (Form 87).

17. Deals with inspection of Court-rolls by copyhold-tenant; 18, actions against or by high bailiff; 19, non-compliance with order of Court respecting interrogatories or discovery.

20. The party seeking discovery and inspection to give security for the costs, unless otherwise ordered.

21. The amount of security for interrogatories

to be twenty shillings for five folios, and two shillings for every additional folio; or discovery otherwise than by interrogatories, twenty shillings. Until fees are paid, party not bound to answer.

22. Provides for the payment out of court of amount paid in as security.

ORDER XVII. CHANGE OF PARTIES.

1. An action not to abate by reason of marriage, death, or bankruptcy of any party, if the cause of action continues; or become defective by the assignment, creation, or devolution of any estate or title, whilst the action is in progress.

2 to 7. Relate to notices and orders to be given and served when any change in title occurs (Forms 112, 113, 114). Where person entitled to proceed fails to appear on return day, trial may be adjourned in case of death. 9. Where a plaintiff or defendant is substituted or added, proceedings to be carried on under altered title. 10. This Order does not apply to any case expressly provided for by 51 & 52 Vict. c. 43, § 94, which relates to continuation of action after bankruptcy of plaintiff.

ORDER XVIII. EVIDENCE.

1. Summons to witness may be issued without leave, and served by party applying, his solicitor, or some person in the exclusive employment of either, one name only to be inserted in the summons (Forms 145 or 146).

2. To be properly served within a reasonable time, in manner directed for service of ordinary summons.

3. Except where otherwise proved, evidence to be taken orally on oath at trial.

4. When witness does not produce required documents, an order for their production may be made, etc. (Form 148).

5, 6, 7. Relate to the admission of documents in evidence (Forms 90, 91).

8. Documents produced from proper custody to be read without further proof if quoted afterwards and no objection taken.

9. Unstamped or insufficiently stamped instrument to be given in evidence only where receipt of registrar for unpaid duty and penalty is produced, and the sum of £1 is paid.

10. Relates to the notices to be given where affidavits are used.

11. Documents used at trial may be used in subsequent proceedings in the same action or matter.

12. Any party may use in evidence any one or more of the answers to interrogatories of opposite party without putting in others, subject to decision of the Judge.

13. Affidavits and depositions shall be read as the evidence of the person by whom used.

Examinations.—14. The Court may make an order for the examination upon oath, before any person, at any place, of any witness or person, before the trial, and may empower any party to the action to give the deposition in evidence (Form 152).

15. The Judge may appoint registrar of court of the district in which the witness resides to take the examination.

16. The Court may order the attendance of person to be examined, and to produce documents before examiner.

17. Disobedience to an order for such attendance to be deemed contempt of court.

18. Person required to attend is entitled to conduct money and payment for expenses and loss of time, as upon attendance at a trial in court.

19. Examiner to be furnished with the necessary documents.

20. The examination to be in the presence of

the parties, their counsel, solicitors, or agents—witness may be subject to cross or re-examination.

21. Describes how depositions are to be taken, etc.

22, 23, 24. If witness fail to comply with subpoena, or to be sworn, or to answer before examiner, the Judge may order him to attend to be sworn, or to answer. Witness may be ordered to pay costs occasioned by refusal or objection.

25. Original depositions shall be signed by the examiner, and be transmitted to the registrar to be filed.

26. The examiner may make a special report on the case.

27. No deposition to be given in evidence without the consent of the party against whom it is offered, except otherwise ordered or directed by the Judge.

28. Gives power to examiner to administer oaths.

ORDER XIX. AFFIDAVITS.

1 to 10. Relate to the form, etc., of affidavits (Form 48).

ORDER XX. ARBITRATION.

The Judge may, with the consent of the parties, refer matter to arbitration (51 & 52 Vict. c. 43, §§ 63 and 104). (Form 209.)

ORDER XXI. ASSESSORS.

1 to 13. Relate to the appointment, qualification, pay, etc., of assessors (Forms 128, 133).*

ORDER XXII. TRIAL.

1. Written notice of demand for a jury to be made five clear days before the return day.

2. Where notice has not been given, or if at trial both parties desire a jury, and no jury be

* See Chap. XIII., Employers' Liability Act.

present, the Judge may adjourn the trial for jury to be summoned.

3. By order of Judge or registrar, any question of fact may be tried by jury.

4. Relates to number of jury to be summoned.

5. If plaintiff does not appear, and defendant appears, and does not admit plaintiff's claim, the Court may award costs to defendant, etc., as if an action had been tried (Form 37).

6. Where on a default summons notice of defence has been given, and neither plaintiff nor defendant appear, the action to be struck out. Where defendant appears and plaintiff does not, action to be struck out, and costs may be ordered. Where plaintiff appears and defendant does not, judgment is given for plaintiff without further proof. Payment by instalments may be ordered.

7. If plaintiff fails to appear, defendant may prove counter-claim and have judgment, subject to appeal.

8. Deals with appointment of guardian where infant is defendant (Forms 65 or 66).

9. If action on same matter is pending in another court, the trial to stand adjourned.

10. At trial the Court may try the whole matter of the action, give judgment, grant relief, redress, or remedy, and make any order in aid and as to costs.

11. Provides as to administration of estates or trusts; and 12 for injunction in certain cases of breach of contract, or wrongful act. Judge may grant an injunction.

13. Judge may inspect, or order jury to inspect, property or thing concerning which any question may arise in the action.

14. Absent parties may be added on hearing at the trial if the Judge thinks fit.

15. Provides that where action is stayed, discontinued, or dismissed, if defendant has set up counter-claim it may be proceeded with.

16. Counter-claim may be tried by an independent action, if the Court thinks that it can thus be better disposed of.

17. Where a person not originally party to the action is served with notice and fails to appear at trial, the trial may proceed or be adjourned.

18. In case of counter-claim, judgment may be given for balance found due to the defendant, or for other relief (Form 35).

19. Where action is against officer of court, the Judge may direct trial to take place in some other court.

20. Judge may give general or special leave to registrar in certain cases to exercise jurisdiction.

21. Where the registrar is authorised to hear disputed claims not exceeding £2, he shall inquire if parties prefer to be heard by the Judge.

ORDER XXIII. JUDGMENTS AND ORDERS.

Provides: 1. Entries to be made in minute book. 2. Preparation of special judgments or orders in the nature of decrees to be by registrar, to be delivered to successful party. 3. Interrogatory orders need not be drawn up, unless Court shall direct. 4. Service of judgment order to be made by or on solicitor. 5. Service of judgments and orders to be by bailiff. 6A. Order on a default summons not to be served unless judgment is for payment by instalments. 7. Purposes for which a certificate of judgment, etc., is required to be stated (Form 49). 8A. Money under ordinary judgment to be paid within fourteen days, unless otherwise ordered. 9A. Payment by instalments to be notified to plaintiff (Form 38). 10. Refers to action to recover or relating to land (Form 223). 11. Relates to the preparation of a deed where ordered. 12. As to sale of real property (Form 263). 13. Sale of personal property. 14. Applications to vary order of payment (Form 34A).

ORDER XXIV. ACCOUNTS AND INQUIRIES.

1, 2, 3. Direct how accounts are to be taken or inquiries made by the registrar, etc. (Form 275). 4. Books of account to be *primâ facie* evidence. 5 to 13. Relate to proceedings before the registrar in administrations (Forms 276, 277). 14. Just allowances to be made in taking account. 15. Registrar to certify to Judge (Form 278). 16. Certificate may be inspected (Form 280). 17. Provides for variation or confirmation of certificate. 18. If no application made, certificate to be taken as confirmed. 19. Application may be made to Judge for further directions, who may make appointment for hearing, and stay proceedings.

ORDER XXV. ENFORCEMENT OF JUDGMENT AND ORDERS.

1. Order for payment of money may be enforced as judgment for debt or damages. 2. Costs of married woman may in certain cases be enforced in her own name. 3A. Where difficulty arises in execution of any judgment or order, other than for the recovery of money, party may apply to the Judge. 4. Warrants of execution against goods to bear date of issue, and to be in force for one year. 5. Applicant for warrant to produce plaint note or summons and furnish præcipe. 6. Where no payment on judgment has been made for two years, leave to issue execution must be obtained. 7. Where default in payment is made, execution may issue. 8. Provides for execution against a firm and partners individually. 8A. Charging order against interest of partner under Partnership Act, 1890. 8B. Application by partners under same Act. 9A. When leave is required for issue of execution (Forms 115 or 228). 10A. Service of order under preceding Rule. 11. Warrant of execution against goods to be endorsed with amount to

be levied. 12. Warrants of execution against goods may be issued concurrently into one or more districts. 12A, 12B, 12C, 12D, relate to applications for private sale of goods taken in execution.

Judgment Summons.—13. To be served personally upon the judgment debtor. 14A. Judge to give leave to issue out of court district (Form 52). 14B. Relates to judgment summons against firm. 15. Not to issue, unless as a successive summons, after expiration of four months, except upon affidavit, etc. 16. Where applied for at a court in which judgment was not obtained (Form 49). 17. Where party desires commitment to enforce judgment other than County Court (Form 51). 18. Issue and service (Forms 50 or 53). 19. Where judgment debtor is about to remove or is keeping out of the way, may issue before hearing. 20A. Provides for successive summons (Form 52B). 21. Hearing may be adjourned. 22. Witness may be summoned to prove means of debtor. 23. Entries to be made by registrar. 24. Evidence by affidavit, where plaintiff or defendant is non-resident in district. 25. Bailiff to lodge warrant of execution. 26. Where commitment order is made or order is altered by Court, proceedings to be continued in that court (Form 54). 27. Registrar to enter minute that a certificate has been given. 28. Where order is sent to foreign court, the registrar of such court to endorse it (Form 56). 29. Bankrupt not to be committed. 30. No commitment when adjudication takes place after order of commitment (Form 58). 31. Relates to discharge of judgment debtor (Form 60). 32A. Certificate under three last Rules (Form 59). 33. Order of commitment cannot be enforced after the expiration of a year unless the Judge otherwise order (Form 55). 34. Payment after arrest. 35. Payment when in prison (Form 61). 36. Discharge of prisoner (Forms 62 or 63). 37. Certificate of payment (Form 61). 38. Costs on default of appearance of judgment

creditor. 38A. No costs to solicitor. 38B. No costs allowed where fresh order is made as to payment. 39. Costs of endeavours to procure or enforce judgment or order are deemed to be due upon it, unless otherwise ordered.

Warrant of Attachment.—40A. Orders are enforceable by attachment for breach of certain orders (Form 296). 40B. Sealed copy of order (Form 292D) must be served before warrant is applied for. 41A. On failure to obey order after service of copy thereof, notice to appear at court (Form 293). 42A. Relates to order of Judge for attachment (Forms 294A and 296). 42B. Order to be drawn up and copy served. 43. Discharge of person in custody to be by order of Court only. 44. Discharge by registrar (Forms 298, 299).

Warrant of Possession.—45 to 49. Relate to recovery of land (Forms 226, 227).

Warrant of Delivery.—50. Relates to execution for the recovery of property other than land or money; 51, to the form of warrant for delivery (Forms 250, 251, 252); and 52, to examination of judgment debtor as to his means.

ORDER XXVIA. ATTACHMENT OF DEBTS.

1 to 14. Relate to proceedings where a judgment creditor can enforce the payment of money owing to his judgment debtor by a third person, who is termed a garnishee (Forms 38A, 49, 155A, 156A, 157A, 158).

ORDER XXVII. INTERPLEADER.

1 to 14. Relate to proceedings which are to follow if goods are seized under an execution, and are claimed by a third person. The ownership may be determined on an interpleader summons (Forms 134, 135, 136, 137, 138, 178, 179, 180, 181).

ORDER XXVIII. TRANSMISSION OF PROCEEDS OF WARRANTS FROM FOREIGN DISTRICTS.

1 to 3. Relate to the duties to be performed by officers of the court (Form 174 and M.).

ORDER XXIX. SECURITY.

1. Where security by bond is required, notice of sureties proposed to be given (Form 120); objection thereto (Form 122). 2. Sureties to make affidavit as to sufficiency of means (Form 121). Bond to be executed in presence of Judge, registrar, commissioner, or clerk to take affidavits. 4. Money may be deposited in lieu of bond—notice to be given. 5. Bond to be deposited. 6. Officer of court not to be surety.

ORDER XXX. PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

1. In an action by an executor or administrator if the plaintiff fails, he has to pay the costs out of his own pocket, unless the Court otherwise orders. 2 to 12. Relate to actions in which executors or administrators are either plaintiffs or defendants, and the different forms of judgment which may be given therein, according to the conduct of the parties and the condition of the deceased's estate (Forms 200, 201, 202, 203, 204, 205, 206, 208).

ORDER XXXI. NEW TRIAL.

1A. Application for a new trial may be made on day of trial, or after notice at first court held after the expiration of twelve days from trial, or subsequently by leave of the Judge. 2. Judge may direct new trial to be had before a jury.*

ORDER XXXII. APPEALS. 1, 2, 3, and 4.

Amended by 57 & 58 Vict. c. 16 (1894).*

* See Chapter XVII., Appeals and New Trial.

ORDER XXXIII. ACTIONS, ETC., REMITTED FROM OR TO HIGH COURT.

1 to 11 deal with actions or matters remitted from or transferred to the High Court of Justice, and refer to the requisite forms.

ORDER XXXIV. REPLEVIN.

1 to 6. Relate to proceedings to obtain re-delivery of goods which have been wrongfully distrained or taken. No other cause of action can be joined with this (Forms 34, 247, 248, 742).

ORDER XXXV. BILLS OF EXCHANGE ACT, 1855.

1A, 2, 3, and 4 relate to summary procedure under 18 & 19 Vict. c. 67, §§ 2 and 3.

ORDER XXXVI. REGISTRY OF JUDGMENTS.

1. Relates to registrar's duties.

ORDER XXXVII. FUNDS.

1 to 4. Relate to equity matters; 5 to the examination of a married woman's interest in fund.

ORDER XXXVIII. TRUSTEE RELIEF ACTS, SETTLED LAND ACT, COUNTY COURTS ACT, 1888, § 70.

1 to 29 deal with matters under the above-named Acts, and need not be summarised here.

ORDER XXXIXB. ADMIRALTY ACTIONS.

1 to 80. Relate to proceedings in actions which pertain to maritime matters.

ORDER XL. AGRICULTURAL HOLDINGS (ENGLAND) ACT, 1883.

1. Gives interpretation of terms in certain cases under 46 & 47 Vict. c. 61. 2 to 6. Relate to proceedings as to appeals; and 7 to referee or umpire.

ORDER XLI. FRIENDLY SOCIETIES ACT, 1875, ETC.

1. Disputes in connection with Friendly Societies Acts, Industrial and Provident Societies Acts, Building Societies Acts, Literary and Scientific Institutions Act, 1854, shall be referred by plaint and summons in the ordinary way.

2. In proceedings, the claiming or aggrieved member (or other person) shall be the plaintiff, and the society shall be defendant.

3. Particulars of demand shall be filed. They shall state concisely the nature of the dispute referred, and the relief or order which the plaintiff claims.

4. Applications to the Court by trustees or officers of the society (under § 20 of 38 & 39 Vict. c. 60), shall be by action, commenced by plaint or summons, in which the society shall be plaintiff, the other person defendant.

5. Applications to the Court (under 37 & 38 Vict. c. 42) against officers of the society shall be by plaint and summons, the society being plaintiff and the officer proceeded against defendant.

6. Particulars of demand to be filed under Rules 4 and 5 of Order.

7. Where bond is not in suit, particulars to state shortly the nature of the thing required to be done, or neglect complained of.

8. Where property is required to be given up, the particulars shall contain a description of such property.

ORDER XLII. WINDING UP COMPANIES OR SOCIETIES.

The provisions of the Companies Acts, 1862 to 1890, and the Rules made thereunder, so far as they relate to winding up, shall apply to the winding up of Building Societies, Industrial and Provident Societies, and shall be conducted in all respects as if they were companies under the said Acts. Costs

to be taxed according to the scale of the Supreme Court.

ORDER XLIIA. BRINE PUMPING, COMPENSATION FOR
SUBSIDENCE ACT, 1891.

1 to 4 relate to appeals to County Courts under above Act.

ORDER XLII B. LUNACY ACT, 1890.

Applications to Judge under §§ 132 and 300 shall be by petition; the same procedure shall be followed, fees paid, and costs allowed, as on petition under Order XXXVIII.

ORDER XLIII. LOCAL LOANS ACT, 1875.

1 to 3. Applications to the Court for appointment of a receiver under §§ 12 and 25.

ORDER XLIV. EMPLOYERS' LIABILITY ACT, 1880.

Rules 1 to 15, 16A and 17 are given in Chap. XIII., Employers' Liability—which see.

ORDER XLV. INFERIOR COURTS JUDGMENTS
EXTENSION ACT, 1880.

1 to 11. Relate to proceedings in case of judgment not being satisfied, the granting of certificate, costs, etc. (Forms 314, 315).

ORDER XLVI. MARRIED WOMEN'S PROPERTY ACT, 1882.

1. Where application is made under § 17 of the Act, particulars of question to be submitted to the Court shall be filed, and thereupon a summons shall issue (Form 316). Same fee and proceedings as upon entry of plaint. Subsequent proceedings to be in accordance therewith. 2. The Judge shall direct as to scale of costs.

ORDER XLVII. GUARDIANSHIP OF INFANTS ACT, 1886.

1 to 9. Applications to be by petition; by next friend, guardian, mother or father, etc. Judge to direct as to service of petition, which must show age of infant, nature and amount of fortune and income, and what relations infant has.

ORDER XLVIII. CHARITABLE TRUSTS ACTS.

1 to 20. Record to be kept (Form 341). Relate to proceedings by private persons; by Attorney-General; summons (Form 338); notice to attend (Form 339); service of; registrar may issue notices (Form 340); Judge to direct as to service; note to be sent to Charity Commission; to Attorney-General; copy of proceedings to Charity Commission; fees to be paid; who may appear; effect of order conclusive; general practice of County Courts to be adopted; registrar to file trustees' accounts.

ORDER XLIX. PROBATE OR LETTERS OF ADMINISTRATION.

1 to 12. Relate to applications to commence proceedings (Form 347); lodgment of caveat; person to be plaintiff; proceedings (Form 348); issue of notice; serving notice; to district registrar (Form 349); certificate (Form 350); hearing (Form 351); transmission of action from High Court (Form 348). Where no practice provided, rules and practice of High Court to be followed, etc.

ORDER LA. COSTS.

1 to 32. Relate to taxation and delivery of costs, and proceedings with respect thereto.

ORDER LI. GENERAL PROVISIONS.

1 to 8. Relate to the employment of solicitor and counsel, notices, etc. (Forms 29, 30, 31, 287); 9 and

10A to advertisement of action. 11 to 29. Relate to proceedings in conduct of action, administration of estates and legacies; documents, notices; times and holidays; service on defendant, procedure, etc. (Forms 30, 31).

ORDER LII. INTERPRETATION OF TERMS.

“The Act” means the County Courts Act, 1888. Affidavit—statutory declaration or affirmation, etc. Clear days—excludes first and last days named. Court—Judge or registrar, in chambers or open court. Default summons—that issued on entry of plaint, and required to be served personally. Ordinary summons—that issued on entry of plaint, not required to be served personally. Foreign Court—that of a district into which process is issued from another court. High Bailiff—either, if more than one. Home Court—that from which process originally issued. Home District—the district of home court; Foreign District—that of foreign court. Judgment—final decision of Court in any action. Month—calendar month. Order—final or other decision of the Court, or of the Judge or registrar in any interrogatory application. Trial—hearing of any action or matter in court. Vessel—any description of vessel used in navigation, not propelled by oars only.

Dated 1st January, 1889.

Amended Rules—5th February, 1892.

CHAPTER XVII.

LAW AND PROCEDURE AS TO APPEAL, AND NEW TRIAL.

THE provisions of the law and the methods of procedure as regards appeals have considerably changed since the last edition of this work, and therefore it is very desirable that the whole matter pertaining to appeals should be brought together into one chapter. This is all the more necessary because the Summary Jurisdiction Act, 1884, and more especially the Supreme Court of Judicature (Procedure) Act, 1894, aim at uniformity of proceedings as regards appeal, and the rules of procedure have contributed to that end. By the Summary Jurisdiction Act, 1884 (the 47 & 48 Vict. c. 43), § 4 and the schedule, the sub-sections of § 20 of the Trade Union Act, 1871, and the sub-sections of § 12 of the Conspiracy and Protection of Property Act, 1875, relating to the conditions and regulations respecting appeal, are repealed.

I. Appeals are now regulated by "The Summary Jurisdiction Act, 1879" (42 & 43 Vict. c. 49), as follows:—

"§ 19. Where, in pursuance of any Act,

whether past or future, any person is adjudged by a conviction or order of a court of summary jurisdiction to be imprisoned without the option of a fine, either as a punishment for an offence, or, save as hereinafter mentioned, for failing to do or to abstain from doing any act or thing required to be done or left undone, and such person is not otherwise authorised to appeal to a court of general or quarter sessions, and did not plead guilty, or admit the truth of the information or complaint, he may, notwithstanding anything in the said Act, appeal to a court of general or quarter sessions against such conviction or order. Provided that this section shall not apply where the imprisonment is adjudged for failure to comply with an order for the payment of money, for the finding of sureties, for the entering into any recognisance, or for the giving of any security."

Same Act—Part II. Amendment of Procedure.

"§ 31. Where any person is authorised to appeal from the conviction or order of a court of summary jurisdiction to a court of general or quarter sessions, he may appeal to such court subject to the conditions and regulations following :—

"(1.) The appeal shall be made to the prescribed court of general or quarter sessions, or if no court is prescribed, to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the said court of summary jurisdiction acted, and holden not less than fifteen days after the day on which the decision was given upon which the conviction or order was founded ; and

"(2.) The appellant shall, within the prescribed time, or if no time is prescribed, within seven days after the day on which the said decision of the court was given, give notice of appeal by serving on the other party, and on the clerk of the said

court of summary jurisdiction, notice in writing of his intention to appeal, and of the general grounds of such appeal; and

“(3.) The appellant shall, within the prescribed time, or if no time is prescribed, within three days after the day on which he gave notice of appeal, enter into a recognisance before a court of summary jurisdiction, with or without a surety or sureties as that court may direct, conditioned to appear at the said sessions and to try such appeal, and to abide the judgment of the court of appeal thereon, and to pay such costs as may be awarded by the court of appeal; or the appellant may, if the court of summary jurisdiction before whom the appellant appears to enter into a recognisance think it expedient, instead of entering into a recognisance, give such other security by deposit of money with the clerk of the court of summary jurisdiction or otherwise, as that court deems sufficient; and

“(4.) Where the appellant is in custody, the court of summary jurisdiction before whom the appellant appears to enter into a recognisance may, if the court think fit, on the appellant entering into such recognisance or giving such other security as aforesaid, release him from custody; and

“(5.) The court of appeal may adjourn the hearing of the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter, with the opinion of the court of appeal thereon, to a court of summary jurisdiction acting for the same county, borough, or place as the court by whom the conviction or order appealed against was made, or may make such other order in the matter as the court of appeal may think just, and may by such order exercise any power which the court of summary jurisdiction might have exercised, and such order shall have the same effect, and may be enforced in the same manner, as if it had been made by the court of summary jurisdiction. The

court of appeal may also make such order as to costs to be paid by either party as the court may think just; and

“(6.) Whenever a decision is not confirmed by the court of appeal, the clerk of the peace shall send to the clerk of the court of summary jurisdiction from whose decision the appeal was made, for entry in his register, and also endorse on the conviction or order so appealed against, a memorandum of the decision of the court of appeal; and whenever any copy or certificate of such conviction or order is made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence of the said decision in every case where such copy or certificate would be sufficient evidence of such conviction or order; and

“(7.) Every notice in writing required by this section to be given by an appellant shall be in writing signed by him, or by his agent on his behalf, and may be transmitted as a registered letter by the post in the ordinary way, and shall be deemed to have been served at the time when it would be delivered in the ordinary course of the post.

“§ 32. In accordance with the conditions and regulations prescribed by the Act authorising the appeal, so far as the same is unrepealed, such appeal shall not be deemed invalid by reason only that it is not in accordance with the conditions and regulations contained in this Act.

“Where any past Act, so far as unrepealed, prescribes that any appeal from the conviction or order of a court of summary jurisdiction shall be made to the next court of general or quarter sessions, such appeal may be made to the next practicable court of general or quarter sessions having jurisdiction in the county, borough, or place for which the court of summary jurisdiction acted, and held not less than fifteen days after the day on which the decision was given upon which

the conviction or order appealed against was founded.

“§ 33. (1.) Any person aggrieved who desires to question a conviction, order, determination, or other proceeding of a court of summary jurisdiction, on the ground that it is erroneous in point of law, or is in excess of jurisdiction, may apply to the court to state a special case setting forth the facts of the case and the grounds on which the proceeding is questioned, and if the court decline to state the case, may apply to the High Court of Justice for an order requiring the case to be stated.

“(2.) The application shall be made and the case stated within such time and in such manner as may be from time to time directed by Rules under this Act, and the case shall be heard and determined in manner prescribed by Rules of Court made in pursuance of ‘The Supreme Court of Judicature Act, 1875,’ and the Acts amending the same; and, subject as aforesaid, the Act 20 & 21 Vict. c. 43, intituled ‘An Act to improve the Administration of the Law so far as respects Summary Proceedings before Justices of the Peace,’ shall, so far as it is applicable, apply to any special case stated under this section, as if it were stated under that Act :

“Provided that nothing in this section shall prejudice the statement of any special case under that Act.”

“§ 40. A writ of certiorari or other writ shall not be required for the removal of any conviction, order or other determination, in relation to which a special case is stated by a court of general or quarter sessions for obtaining the judgment or determination of a superior court.”

II. The Summary Jurisdiction Act, 1884 (the 47 & 48 Vict. c. 43), “An Act to repeal divers enactments . . . relating to Proceedings before Courts of Summary Jurisdiction, and to make further provision for the Uniformity of Proceedings

before those Courts.” This Act repealed certain provisions relating to appeal in the Trade Union Act, 1871, § 20; and similar provisions in the Conspiracy and Protection of Property Act, 1875, § 12, and also other provisions relating to appeal. The repeal only extended to England and Wales, § 4.

“§ 6. Where a person is authorised by any Act passed before the commencement of the Summary Jurisdiction Act, 1879, to appeal from the conviction or order of a court of summary jurisdiction made in pursuance of the Summary Jurisdiction Acts, or from the refusal to make any conviction or order in pursuance of those Acts, to a court of general or quarter sessions, he shall, after the passing of this Act, appeal to such court subject to the conditions and regulations contained in the Summary Jurisdiction Act, 1879, with respect to an appeal to a court of general or quarter sessions.”

§ 7. Provides for the removal of doubts as to jurisdiction of magistrates, and enacts that the definition, § 50 of 42 & 43 Vict. c. 49, shall include such justice, justices, or magistrate as therein mentioned, whether acting under the Summary Jurisdiction Acts, or any of them, or under any other Act, or by virtue of his or their commission or by the common law.

This section brings all such cases as arise under the Trade Union Acts, Employers and Workmen Act, or other Acts within the Summary Jurisdiction Acts, in so far as the provisions or any of them apply.

III. RULES UNDER THE SUMMARY JURISDICTION ACTS, 1886—AS TO APPEAL.

The time for stating a special case under the Rules is as follows :—

18. "An application to a court of summary jurisdiction under § 33 of the Summary Jurisdiction Act, 1879, to state a special case shall be made in writing, and a copy left with the clerk of the court, and may be made at any time within seven clear days from the date of the proceeding to be questioned, and the case shall be stated within three calendar months after the date of the application and after the recognisance shall have been entered into."

IV. THE COUNTY COURTS ACT—APPEAL.

Under the County Courts Act, 1888, and the Orders in conformity therewith, the following provisions, Orders, and Rules apply, as regards an appeal in any case.

A. *Appeals, etc., Part V., 51 & 52 Vict. c. 43.*

§ 120. Provides that any party in any action or matter aggrieved may appeal by notice of motion, if "dissatisfied with the determination or direction of the Judge in point of law or equity, or upon the admission or rejection of any evidence," to the High Court in such manner, and subject to such conditions as may be for the time provided by the Rules of the supreme court regulating the procedure as to appeals from inferior courts to the High Court.

§ 121. Provides that in procedure on appeal, the Judge shall, at the request and at the expense of either party, furnish a copy of the note taken at the trial or hearing, or allow a copy to be taken by or on behalf of the person applying, whether a notice of motion has been served or not in the matter of such appeal. The signed copy to be used at the hearing of appeal.

§ 122. Empowers the High Court to draw inference of fact, order a new trial, or order judgment to be entered for either party as the case may be, or make final order to ensure the determination on the merits of the real question in controversy between the parties.

§ 123. No appeal shall lie from the decision of the Judge, if before the decision is pronounced the parties shall agree, in writing by themselves or their solicitors or agents, that his decision shall be final.

§ 124. Provides that no appeal shall be allowed except in the manner and according to the provisions in this Act mentioned.

§ 125. Refers to appeal in Admiralty actions.

§ 126. Provides that the High Court or Judge thereof may order the removal into the High Court of any action or matter commenced in the county court, upon such terms as to costs and security as the Court may impose.

§ 127. Provides that a Judge of the High Court may hear applications for prohibition, and make orders for the issuing of writs, during vacation.

§ 128. Such prohibitions to be finally disposed of by order, no further proceedings being allowed.

§ 129. Order to show cause as to certiorari or prohibition to operate as a stay of proceedings until determination of order, or summons, or as the High Court shall order.

§ 130. Provides as to notice and costs of prohibition, etc.

§ 131. No writ or mandamus to issue to Judge or officer of court for refusing to do any act re-

lating to duties of office, but any party may apply to High Court to issue order, etc.

§ 132. Provides that where order or writ has been refused by High Court, no Judge shall grant writ or order, but second application may be made, or appeal to High Court against the decision of Judge.

V. THE COUNTY COURT RULES: APPEALS.

It appears that (a) the registrar may refer any matter to the Judge, if in doubt as to the proper order to be made. If the registrar makes an order the Judge may vary or rescind it. (b) The order of a Judge granting a prohibition may be appealed against in the ordinary way by motion, within eight days. (c) An appeal also lies from a Divisional Court to the Court of Appeal. (d) No leave is requisite under the Act. (e) An appeal lies from the Court of Appeal to the House of Lords. (f) Costs appear to be in the discretion of the Court.

A. *Order XII., Rule 11A.* (7) The registrar may, if in doubt as to the proper order to be made, refer the matter to the Judge forthwith, or at the next court day, or at the trial.

(8) The Judge may vary or rescind any order made by the registrar, and may make such order as may be just, and if necessary adjourn the trial.

(4) The allowance of the costs of and incidental to the application shall be in the discretion of the Judge or registrar. No costs shall be allowed on taxation without special order.

The regulations as to costs cover all interlocutory

applications under Rule 11A, and do not refer solely or specially to Rules (7) and (8) above quoted.

B. Order XXXII. Rules as to Appeals.

1. Appeals shall be had in accordance with the provisions of the Rules of the supreme court, made under the Supreme Court of Judicature Act, 1884 (47 & 48 Vict. c. 61), §§ 23 and 24. To which must now be added the Supreme Court of Judicature (Procedure) Act, 1894 (57 & 58 Vict. c. 16).

“2. When the court of appeal has pronounced judgment, either party may deposit the same, or an office copy thereof, with the registrar of the county court, and upon being so deposited such judgment shall be filed, and may be enforced as if it had been made in the county court.

“3. A new trial in pursuance of the order of the court of appeal shall be entered for trial at the county court which shall be holden next after twelve clear days from the time when such order or office copy thereof shall have been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the Judge otherwise order, and it shall be conducted in the same manner as any new trial granted by the county court itself.

“4. If the order of the court of appeal be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the county court.”

VI. SUPREME COURT OF JUDICATURE ACTS, 1875 AND 1894—AND RULES.

By § 17 of 38 & 39 Vict. c. 77, it is provided, among other things, (1) that “additional Rules of Court” may be made for carrying the principal Act, and this Act, into effect.

(2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal.*

The Supreme Court of Judicature Act, 1894 (57 & 58 Vict. c. 16) makes the following regulations as to appeals:—

“§ 1. *Regulations*.—(1.) No appeal shall lie : (A) from an order allowing an extension of time for appealing from a judgment or order ; nor, (B) without the leave of the Judge, or of the Court of Appeal, from any interlocutory order or interlocutory judgment made or given by a Judge, except in the following cases :—”

“(1) Where the liberty of the subject or the custody of children is concerned ; and (2) cases of granting or refusing an injunction or appointing a receiver ; and (3) any decision determining the claim of any creditor or the liability of any contributory, or the liability of any director or other officer under the Companies Acts, 1862 to 1890, in respect of misfeasance or otherwise ; and (4) any decree nisi in a matrimonial cause, and any judgment or order in an Admiralty action determining liability ; and (5) any order on a special case stated under the Arbitration Act, 1889 ; and (6) such other cases, to be prescribed by rules of court, as may in the opinion of the authority for making such rules be in the nature of final decisions.”

“(2.) An order refusing unconditional leave to defend an action shall not be deemed to be an interlocutory order within the meaning of this section.”

“(3.) No appeal shall lie from an order of a

* In the Consolidated Rules the order as to special case is 34, and as to appeals, 63. When an Order is quoted thus, R.S.C., it refers to the Rules of the Supreme Court of Judicature. C.C. means County Court Rules. When the section of an Act is quoted without reign and chapter, it is the County Courts Act, 1888.

Judge giving unconditional leave to defend an action."

"(4.) In matters of practice and procedure every appeal from a Judge shall be to the Court of Appeal."

"(5.) In all cases where there is a right of appeal to the High Court from any court or person, the appeal shall be heard and determined by a Divisional Court constituted as may be prescribed by rules of court; and the determination thereof by the Divisional Court shall be final, unless leave to appeal is given by that Court, or by the Court of Appeal."

"(6.) An application for leave to appeal may be made *ex parte* or otherwise, as may be prescribed by rules of court."

"§ 2. *Appeals from Quarter Sessions.* — (1.) Every case stated by a court of quarter sessions otherwise than under 11 & 12 Vict. c. 78, and 12 & 13 Vict. c. 45, for the consideration of the High Court shall be deemed to be an appeal, and shall be heard and determined accordingly."

"(2.) On the hearing of any appeal from a court of quarter sessions the appellate court may draw any inference of fact which might have been drawn in the court of quarter sessions, and may give any judgment or make any order which ought to have been given or made by that court, or may remit the order, and in criminal matters the conviction with the order, and the case stated on it, with the opinion or direction of the appellate court, for re-hearing and determination by the court of quarter sessions, or may remit the case for re-statement."

"(3.) On the hearing of any such appeal the appellate court shall have full power to determine how and by whom the costs of the proceedings in the appellate court and in the court of quarter sessions are to be borne."

"(4.) The judgment in any such appeal, or,

where an appeal to a court of quarter sessions has been directed to be entered for re-hearing, then that appeal shall, on motion by any party to the appeal, be entered at the sessions next, or next but one after delivery of the judgment, or the giving of the direction, and shall, unless the appellate court otherwise directs, have effect as if the judgment had been given, or, in case of an appeal directed to be re-heard, the appeal had been heard and determined, by the court of quarter sessions at the time of the decision in respect of which the appeal from quarter sessions was brought, and entry and respite of any appeal to quarter sessions in respect of which a case has been stated for the consideration of the High Court shall not be necessary."

§ 3. *Rules of Court*.—Gives explanation of power to make rules. § 4. Amends provisions of Acts as to Rule Committee. § 5. Gives power to make rules under this Act and Acts in Schedule.* § 6. Rules as to payments out of court by Paymaster-General. § 7. Gives short title; to be read with the Judicature Acts, 1873 to 1891; date of commencement of Act, 3rd September, 1894.

The Rules of the Supreme Court, dated August 18th, 1894, contain the following pertaining to appeals from chambers:—

"*Order LIV., Rule 23*.—In the Queen's Bench Division, except in matters of practice and procedure, the appeal from a decision of a Judge at chambers shall be to a Divisional Court."

"*Rule 24*.—In the Queen's Bench Division, except in matters of practice and procedure, every appeal to the Court from any decision in

* The Schedule repeals five Acts wholly; all that remained of one Act, and portions of five other Acts. Among those repealed are the Partition Acts, 1868 and 1876.

chambers shall be by motion, and shall be made within eight days after the decision appealed against, or if no Court to which such appeal can be made shall sit within such eight days, then on the first day on which any such Court may be sitting after the expiration of such eight days."

A. *The right of appeal is limited as follows:—*

(1.) No appeal will lie if, before the decision of the Court be pronounced, both parties agree, in writing signed by themselves or their solicitors or agents, that the decision of the Judge shall be final. Such an agreement does not require a stamp (51 & 52 Vict. c. 43, § 123).

(2.) The next friend of an infant plaintiff, who has failed in an action, cannot bind him by an agreement not to appeal in consideration of forbearance of costs against the next friend. (*Rhodes v. Swithenbank*, 22 Q. B. D. 577.)

(3.) There is no appeal of right in any action of contract or tort (not being an action where title is in question) where the debt or damage does not exceed £20 (51 & 52 Vict. c. 43, § 120).

(4.) The right of appeal, as a general rule, depends upon the amount of the plaintiff's claim; if it exceeds £20, even if judgment be for a less sum, an appeal lies. But if the nature of the case is such that the County Court Judge cannot lawfully award more than £20 there is no right of appeal, although the damages claimed and unpaid exceed £20. A plaintiff cannot at the trial abandon the excess of his claim over £20 so as to deprive the defendant of his right of appeal.

(5.) There is no right of appeal in an action of replevin where the rent due, or damage, or value of goods seized is under £20; nor for the recovery of

tenements where the yearly rent of premises does not exceed £20; nor in interpleader proceedings where neither the money claimed, the value of the goods, nor their proceeds exceeds £20. But an appeal will lie if the value of the goods seized exceeds £20, even if the original claim was below that amount. The appraised value of goods is taken to be the value for the purpose of appeal.

B. *Appeal by Leave*.—In the cases above mentioned, where there is no right of appeal by reason of the limit imposed, the Judge may, if he thinks fit, give leave to appeal; and may impose terms as a condition for granting leave, as, for example, that the appellant shall pay the respondent's costs in any event, and if unsuccessful pay the costs of the trial on the higher scale.

C. *Grounds of Appeal*.—(1.) The right of appeal is confined to cases in which one of the parties is dissatisfied with the "determination or direction of the Judge in point of law or equity, or upon the admission or rejection of any evidence." Where there is no jury, the Judge's findings of fact are final, and cannot be questioned. But if the inferences of fact drawn by the Judge from the evidence could not have been arrived at without an error in point of law, an appeal will lie. The same rule applies to equity actions. To support an appeal, a misapplication by the Judge of the principles of equity must be shown.

(2.) If the trial is by jury, their findings of fact cannot be questioned on appeal in the High Court. The only mode of questioning them is by application to the Judge of the county court for a new trial.*

* See New Trial, page 308.

D. *Points to be raised at Trial.*—If an appeal is contemplated, any point which the party may rely upon should be distinctly raised before the Judge at the trial. After raising the point, the right of appeal is not lost by the party proceeding with his case. If the defendant submits that there is no evidence to go to the jury, and the Judge rule against him, the fact of his calling witnesses, and the verdict being against him, does not deprive him of right of appeal.

E. *Mode of Appeal.*—An appeal must be had in accordance with the provisions of the Rules of the Supreme Court of Judicature (Order XXXII., Rule 1).*

(1.) Every appeal must be by notice of motion.†

(2.) Appeal by motion applies to all actions or matters commenced or authorised by the County Courts Act, and also in cases in which some special Act has given the right of appeal, and prescribed the mode. Provision is made for appeal in the Trade Union Act, 1871, § 20, and in the Conspiracy and Protection of Property Act, 1875, § 12; jurisdiction is also given by the Employers' Liability Act, and by other Acts. In some other cases the practice is unsettled, as for example in respect of Friendly Societies and Building Societies.

(3.) The High Court may order the Judge to state a special case if it were found that an appeal could not be maintained by motion in the ordinary manner. But this is a technical point.

* See 47 & 48 Vict. c. 61, § 23; 51 & 52 Vict. c. 43, § 120; and 57 & 58 Vict. c. 16, §§ 1 & 2.

† Order LIX., Rules 10 and 18.

F. *Notice of Motion*.—(1.) The notice of motion must be an eight days' notice, and it must be served and the appeal entered within twenty-one days from the date of the judgment order, or finding complained of.* The time for appealing may be extended by the High Court, but some good ground must be shown.† Where through a mistake of counsel the appellant was a day too late for entry of appeal, the Court extended the time on payment of costs. It is regarded as doubtful whether an appeal can be entered during the long vacation, or even notice of motion given.

(2.) The time from which the twenty-one days begin to run is that at which the judgment or order is signed, entered, or otherwise perfected, or from the time when the finding or refusal is made or given (Order LIX., Rule 12, R.S.C.).

(3.) The date of judgment of County Court Judge is the date of the formal delivery of judgment, and not the day of trial, if judgment is reserved. But the Judge cannot post-date the judgment in order to extend the time for appeal. When judgment is reserved, and notice thereof is sent to the parties for the purposes of appeal, the time will run as from the date of such notice. If on a special finding of facts the Judge directs judgment, but reserves leave to enter judgment on some other day, the time for appeal would date from day of hearing of the motion.

(4.) On appeal against an order granting or refusing a new trial, the time runs from the date of

* Order LIX., Rule 12.

† Order LIX., Rules 16 and 17.

the making of the order, not from the date of the original judgment.

(5.) The notice of motion must state the grounds of appeal—the absence of grounds would be fatal (Order LIX., Rules 10 and 16, R.S.C.). If the grounds appear to be matters of procedure imposed for the benefit of the respondent, he might waive any objection to them, or to their absence. The appellant will not be prejudiced by any action or delay of the Court as to notice or time for appeal.

(6.) The notice of motion must state whether the whole or part only of the judgment, order, or finding is complained of (Order LIX., Rule 10, R.S.C.).

(7.) The notice of motion must be served within the time specified on every party directly affected by the appeal (Order LIX., Rule 10, R.S.C.). Service on the solicitor of a party, who acts by solicitor, would suffice (Order LI., Rule 2A). The High Court has, however, a general power to order service of the notice of appeal on any party, not served, or on a person not a party, if his presence be deemed necessary (Orders LIX., Rule 17, R.S.C., and LVIII., Rule 2).

(8.) The appeal must be entered within the time specified by lodging a copy of the notice of motion at the Crown Office Department of the Central Office, at the Royal Courts of Justice (Order LIX., Rule 11, R.S.C.).

a. *Security*.—(1.) The appellant is not obliged to give security unless ordered to do so by the High Court. The appeal will not, however, operate as a stay of proceedings unless the County Court Judge

so orders, or unless within ten days after the decision appealed against a deposit be made of, or security be given to the satisfaction of the County Court for, a sum not exceeding the amount of money or the value of the property affected by the judgment, order, or finding appealed from (Order LIX., Rule 14, R.S.C.).

(2.) Where an infant sues by a next friend, the High Court may order security for the costs of the appeal if the next friend is without means. But generally the High Court will not order security in any case where the Judge has given an unconditional leave to appeal.

(3.) Security must always be by bond or deposit of money. The respondent may waive his right to security; and if the appellant, through no fault of his own, failed to complete his security either through the default of the respondent, or of the Judge or the registrar, he could not be deprived of the benefit of the stay of proceedings.

H. *Cross Appeal*.—A respondent is not required to give notice of motion by way of cross appeal; but if he intends on the hearing of the appeal to contend that the decision of the County Court should be varied, he must within eight days from the service of the notice of motion, give notice of his intention to the parties who may be affected by it. The omission of notice will not affect the power of the Court, but it may be made a ground for an adjournment of the case, or for a special order as to costs (Order LIX., Rule 17, R.S.C.). The grounds of the cross appeal must be clearly stated.

I. *Judge's Notes*.—(1.) To facilitate appeals by motion, § 120 of the County Courts Act, 1888,

provides that, "at the trial or hearing of any action in which there is a right of appeal, the Judge must, at the request of either party, make a note of any question of law raised at the trial or hearing, and of the facts in evidence in relation thereto, and of his decision thereon, and of his decision of the action or matter." Two technical difficulties seem to have arisen over this provision which the solicitor employed will do well to consider; one is that a mere statement by the solicitor that the case was important and might be taken to the High Court "was technically insufficient." The other is that a request made within two hours after the judgment "was too late."

(2.) The above provisions as to notes by the Judge are intended to be for the benefit of the party appealing, or intending to appeal. But they do not constitute a condition precedent to the right of appeal. Where without any request being made the County Court Judge had taken a full note, and had added a statement of the points of law raised and determined, the Court of Appeal has held that an appeal would lie.

(3.) If the notes are not produced, the Court may hear the appeal on any other evidence or statement of what occurred in the court below, which the Court may deem sufficient (Order LIX., Rule 8, R.S.C.).

(4.) In a case where evidence had been given wholly by affidavits, and the Judge, after the trial, had compiled notes from such affidavits, they were allowed to be used, and the appeal was heard. In another case where no request had been made, and the Judge's notes were incomplete, the Court heard the motion without notes. In a further

case, the appeal was adjourned in order that the certificate of the County Court Judge might be obtained, that there was no note taken.

J. *Copy of Notes*.—(1.) Where there is a right of appeal, and the Judge has, at the request of either party, made a note (as provided in § 120 of the Act), he must at the expense of either party (§ 186) furnish a copy of the note, or allow a copy to be taken by or on behalf of such party, and he must sign the note, whether notice of motion by way of appeal has been served or not (§ 121). In the event of no request being made, as required by § 120, the Judge is not bound either to take a note, or to furnish or sign a copy (38 & 39 Vict. c. 50, § 6).

(2.) The note should be sealed with the seal of the county court (Order LI., Rule 16), and it must be used at the hearing of the appeal (§ 121). It appears to be the duty of the appellant to supply copies of the notes for the use of the Judges in the Court of Appeal.

(3.) The Court may, however, if the notes are not produced, hear the appeal on any other available evidence or statement of what occurred in the court below, which the Court may deem sufficient (Order LIX, Rule 8, R.S.C.).

K. *Hearing of Appeals*.—(1.) An appeal lies to the Chancery Division of the High Court of Justice, composed of Judges assigned for the purpose of hearing appeals from inferior courts (36 & 37 Vict. c. 66, § 45; 57 & 58 Vict. c. 16, § 1, Sub-section 5; and Order LIX., Rule 4, R.S.C.).*

* See New Rules, 1894, *ante*, as to decision of Judge in chambers.

(2.) The appeal must be entered in the proper list for hearing on such days as the Lord Chief Justice may direct ; and it will come on for hearing in its order, unless the High Court otherwise directs (Order LIX., Rule 15, R.S.C.).

(3.) One counsel only will be heard on each side. The appellant begins, and has the right of reply after the respondent has been heard.

(4.) The Court cannot entertain any objections not made in the court below. In a case where a new point was raised in the county court more than an hour after judgment, the Court dismissed the appeal, though the Judge had made a note and had reserved the point. If, upon the facts appearing on the notes, the judgment can be supported on other grounds than those taken in the court below, judgment will not be disturbed.

L. Powers of High Court.—(1.) The High Court has power (1), to draw inferences of fact ; (2), to amend the grounds of appeal ; (3), to grant a new trial on such terms as it thinks fit ; (4), to order judgment to be entered for either party ; (5), to dismiss the appeal ; and (6), to make any final or other order, on such terms as it thinks just, to ensure the determination on the merits of the real questions in dispute between the parties (§ 122 ; Order LIX., Rule 16, R.S.C.).

(2.) No appeal will hold good merely on the ground of misdirection, or improper reception or rejection of evidence, unless, in the opinion of the Court, substantial wrong has been done, or miscarriage of justice has been thereby occasioned in the court below (Order LIX., Rule 7, R.S.C.).

(3.) The power to enter judgment is valid

whether the trial be before a Judge alone, or with a jury.

" (4.) Whether the Court will in any case receive further evidence on questions of fact depends upon circumstances (Order LVIII., Rule 4; and Order LIX., Rule 17, R.S.C.).

(5.) The judgment of the Court is final unless special leave to appeal to the Court of Appeal be granted by the Court which heard the appeal (36 & 37 Vict. c. 66, § 45).

(6.) No appeal lies against a refusal to grant leave of appeal.

(7.) From the Court of Appeal an appeal lies to the House of Lords.

M. *Proceedings after Judgment*.—(1.) The Court having pronounced judgment, either party may deposit the same, or an office copy, with the registrar of the county court, and upon being so deposited the judgment will be filed, and may be enforced as if it had been made by the county court (Order XXXII., Rule 2).

(2.) When a new trial is ordered the cause must be entered for trial at the county court next held after twelve clear days from the time when the order or copy has been deposited, unless the parties agree that it shall take place sooner, or the Judge otherwise orders. The new trial must be conducted in the same manner as any new trial in the county court itself.

(3.) If the order of the High Court be that judgment be entered for either party, the judgment must be entered accordingly, and the successful party will be at liberty to proceed as on a judgment of the county court (Order XXXII., Rules 2, 3, and 4; and Order LII.).

N. *Costs*.—(1.) The Court may refuse to hear an appeal on the ground that the appeal will not lie, but it really does so far entertain it as to dismiss it with costs. As the powers of the Court depend on jurisdiction, it is questionable whether costs can in this case be exacted.

(2.) A Court cannot make a conditional order that the costs of the appeal shall abide the result of a new trial.

(3.) The costs of appeal follow the event, as a general rule ; and unless there are special circumstances to take a case out of the rule, the appellant, if successful, is allowed his costs of appeal.

(4.) Costs of appeal are not allowed unless the application for them is made at the time the case is disposed of.

(5.) The order of the Court in favour of the appellant will discharge his sureties, if any, provided that he is not ordered to pay the costs of the appeal.

(6.) If money has been paid into court as security for the costs of the appeal, the Court, in granting costs to the appellant, will order the money so paid into court to be refunded.

(7.) The costs of the proceedings in the Court below are dealt with as accessory to the judgment. The reversal of the judgment below, and order for a new trial, reverses an order for costs in the court below.

(8.) In the case of *Outhwaite v. Hudson*, where the County Court Judge ruled a point of law against the plaintiff, with leave to move to set aside the verdict, and the plaintiff, instead of so moving, appealed to a superior Court, which decided in his

favour ; it was held that he ought to have his costs of appeal, inasmuch as he was not bound to go a second time before the same Judge, who had previously expressed an opinion against him.

Trial.—(1.) Where neither party appears at the hearing, the cause is struck out by order of the Judge. Where the plaintiff fails to appear, and the defendant does not admit the claim, the cause will be struck out, but costs may be allowed to defendant. But if the defendant admits the claim and pays the court fee, the Judge may give judgment for the plaintiff. If by reason of the plaintiff not appearing, the cause is struck out and the Judge refuses to restore it, the case is at an end, and no appeal will lie, as the Court above cannot entertain it.

(2.) If the defendant has given notice of a counter-claim he may prove it and get judgment ; but the judgment in this case may be set aside pursuant to the provisions of 51 & 52 Vict. c. 43, § 91, as to terms, etc. (County Court Rules, Order XXII., Rule 7).

(3.) Where the defendant fails to appear, in person or otherwise, without sufficient excuse, the Judge may try the action or matter, and give judgment accordingly. But the Judge may then, or at any subsequent court, set aside the judgment, order, or execution, and grant a new trial on such terms as he shall think fit.

(4.) In an action of contract, if the defendant fails to appear in person, or by some duly authorised person, without sufficient excuse, on proof of service judgment by the registrar may be given for the plaintiff ; but the judgment and execution may be

set aside in this case by the Judge, and a new trial be granted on such terms as he may think fit.

Power to grant a New Trial.—(1.) The Judge may in any action or matter, whether tried by himself or by jury, order a new trial on such terms as he may think fit, and may stay proceedings in the meantime (51 & 52 Vict. c. 43, §§ 186 and 93).

(2.) This power extends to cases where, on the evidence given, the Judge decides that he has no jurisdiction, and has ordered the case to be struck out accordingly.

(3.) A new trial may be granted on the ground that the verdict of the jury is against the weight of evidence, or that the damages are excessive or insufficient.

(4.) If the damages are so small as to indicate that the finding of the jury was a compromise, instead of a decision upon the real question at issue, and that they agreed to find a verdict for nominal damages, or to split the difference, a new trial may be granted.

(5.) Misconduct of the jury, or the exercise of undue influence upon them so as to give rise to a suspicion of bias or unfairness, may also be grounds for a new trial.

(6.) Proof that witnesses upon whose testimony a verdict was obtained, have since been convicted of perjury committed in the case, is a ground for a new trial; but not unless convicted.

(7.) If a material witness at the trial subsequently admits on affidavit that he had made a serious mistake in giving his evidence, it is a ground for a new trial.

(8.) The unexpected discovery after the trial of

new evidence has sometimes been allowed to be a ground for a new trial. But generally, the fact that a party was unprepared with evidence ; that a material witness was absent ; and that evidence was not given that might have been given, are not deemed to be sufficient grounds for a new trial.

(9.) Misdirection and the improper reception or rejection of evidence are good grounds for the granting of a new trial, if substantial wrong or miscarriage of justice has been thereby occasioned (Order XXXIX., Rule 6 ; and Order LXXIX., Rule 7, C.C.). These are also grounds of appeal (51 & 52 Vict. c. 43, § 120).

(10.) The onus of proving that misdirection did not cause a miscarriage of justice lies on the party resisting the application for a new trial.

(11.) If an error or mistake be made in deciding the right to begin, if a manifest wrong has been occasioned thereby, it is deemed to be a ground for a new trial.

Application for New Trial.—(1.) The application for a new trial, or to set aside proceedings, may be made and determined on the day of trial if both parties be present, or it may be made at the first court next held after twelve clear days from day of trial.

(2.) If made after the day of trial, the party intending to make application for new trial must, seven clear days before the holding of the court, deliver to the registrar at his office, and also give the opposing party by serving it on him personally or leaving it at his place of abode or place of business, a notice in writing, signed by himself or his solicitor, of such intention, stating therein

shortly the grounds of the application (Order XXXI., Rule 1A, C.C.).

(3.) But, although the party has omitted to give notice in time, the Judge may, in his discretion, entertain an application for a new trial. The right of notice may be waived by the opposite party.

(4.) The notice does not operate as a stay to proceedings, unless the Judge so orders; but the money paid into court under any execution or order, and not paid out when notice was given, must be retained to abide the result of the application, or until the Judge otherwise orders. If no application is made, the money, if required, must be paid to the party in whose favour the order was made, unless the Judge otherwise directs.

(5.) If the notice be not duly given, or the application be not made at the court mentioned in the notice, no application for a new trial or to set aside proceedings can be subsequently made, unless by leave of the Judge, on such terms as he may think fit (Order XXXI., Rule 1A, C.C.).

(6.) An order made on application for a new trial is final; the Judge cannot entertain a second application.

(7.) In granting a new trial, the Judge may make it a condition that it shall take place before a jury, although the former trial was not (Order XXXI., Rule 2, C.C.).

(8.) On a new trial either party may demand a jury, although there was no jury on the first trial.

Costs.—(1.) If a new trial is granted on payment of costs, which are afterwards paid, the party accepting them is precluded from objecting to the

order. The Judge has the same power over the costs in a new trial as in the first.

(2.) Should the Judge require a bond to be given by either party, the expense of it must be borne by the party giving it (51 & 52 Vict. c. 43, § 108). See also Security.

Appeals.—Under the County Courts Act, 1888, an appeal lies against the order of the Judge granting or refusing a new trial. (1.) The ground of appeal appears to be “the determination or direction of the Judge on a point of law or equity.” Therefore to give rise to an appeal, the Judge in granting or refusing a new trial must have misapplied either law or equity.

(2.) If the Judge grants or refuses a new trial applied for, merely on the ground that the verdict is against the weight of evidence, no appeal will lie unless the Judge misapplies the law in determining the question before him.

(3.) The Court may, on an appeal by a plaintiff against an order for a new trial, order judgment to be entered for defendant.

(4.) The time for giving notice of appeal is twenty-one days from the order granting or refusing a new trial.

(5.) It appears that the time will run from the final disposing of an action; if after leave to move, it was refused, the time for appeal will be from the day of refusal.

(6.) If the Judge reserves leave to move, the party dissatisfied may at once appeal to the High Court, and need not move in the county court.

Staying Execution.—(1.) If the Judge at any time is satisfied that a defendant in any action is unable

from sickness or other sufficient cause to pay and discharge the debt or damages recovered against him, or instalment thereof, he may, in his discretion, suspend or stay any judgment, order, or execution for such time and on such terms as he may think fit, and so on from time to time until it shall have appeared that the temporary cause of the disability has ceased; or he may order the discharge of any debtor who, on account of sickness, insanity, or other sufficient cause, ought in the opinion of the Judge to be discharged (51 & 52 Vict. c. 43, § 153; Form 159).

(2.) The Court has power of staying execution pending a new trial, and pending appeal; but otherwise than above the County Courts Act, 1888, contains no express power to stay proceedings, except under Order VIII., Rules 2, 3, and 4, C.C.

(3.) It is, however, contended that a County Court Judge might stay proceedings in his own court, in any case in which, if the action were in the High Court, an order to stay proceedings might be made.

APPENDICES.

A. PEACEFUL PICKETING.

IN a trial at the Manchester Assizes, July 14th, 1876, of a case of outrage at Bolton, Mr. Baron Bramwell said : " He wished to say nothing against trade unions—if he were a working man he thought he should belong to one of them. . . There was no harm in 'picketing' if they conducted it so as not to terrify people ; but that they should interfere by violence to prevent a man following employment in the way he thought most for his own benefit, and in doing which he did them no wrong or injustice, was the most intolerable piece of tyranny he knew of. It must be severely punished. He wished to give them a word of friendly warning ; he advised them to let their fellow-workmen be as free as they themselves would desire freedom—to make no attempt to enslave them against their liking or inclination."—*Bury Times*, July 15th, 1876.

A case of "picketing," in connection with the engineers' strike at Erith, was tried before Mr. Baron Huddleston, on the same date, at Maidstone Assizes ; the charge involved intimidation and molestation. The learned Judge, after referring to the Acts of 1875, said : "The law was now perfectly fair and equal as to masters and men. You have a right to arrange your own terms of working, but you have no right by unlawful means to combine to impose restrictions upon others . . . to compel others to abstain from working. . . . Under the Act a mere combination to effect a fair trade object is not a criminal conspiracy ; but to combine together to do unlawful acts is to commit a criminal offence." Condensed from *The Times*, July 15th, 1876. Both of those cases were subsequent to the passing of the Labour Laws, 1875.

B. THE PLYMOUTH CASE OF "INTIMIDATION."

This case was taken up by the London Trades Council. The secretary, Mr. George Shipton, prepared and published an elaborate report of the whole case, including the trial in the Queen's Bench Division of the High Court of Justice. The main facts condensed from that report were as follows: The leaders of the combined trade unions of Plymouth were summoned under the Conspiracy and Protection of Property Act, 1875, for alleged intimidation in connection with a dispute with the coal merchants of that town. The case was heard at the Borough Police Court, on October 20th, 1890.

The three defendants were charged with having intimidated one of the employers, with a view to compel him to abstain from doing a certain act which he had a legal right to do, namely, to retain in his employment divers workpeople, non-members of Trade Unions. The case was heard at some length, and the defendants were found guilty, each defendant being fined £20, or in default six weeks' imprisonment. The defendants thereupon decided to appeal to the Plymouth Quarter Sessions. The learned Recorder confirmed the sentence, with an intimation that in any future case the Court might not even give the alternative of a fine.

The defendants had still the right of appeal, but the solicitor for the appellants stated that "he was not instructed to ask that a case should be stated—the fines would be paid, and there would be no further appeal."

The sentence of the Court, the decision of the Recorder, and the determination of the appellants not to appeal, evoked a good deal of comment among trade unionists, and finally the London Trades Council was instructed to take steps to carry the case to a superior Court.

Some difficulties arose in consequence of the statement by the solicitor that there would be no appeal, although the Recorder stated that he was prepared to state a case for the opinion of the superior Courts on points of law. The time for appealing would have gone by but for the merest accident of the Sessions being kept open by adjournment. The London Trades Council secured the services of Messrs. Shaen, Roscoe, & Co., who instructed Mr. Besley to take the necessary steps to get a case stated, in which he succeeded. The legal difficulties being got over, the Recorder willingly consented to state a case, as he had previously intimated he would do. All the facts respecting the negotiations, with

the letters of Mr. W. W. West, on behalf of Messrs. Shaen, Roscoe, & Co., the arrangements as to sureties, together with a synopsis of the case as prepared, are given in the report.

The points upon which the appellants relied briefly were :—

(1.) That the evidence adduced did not disclose any offence against § 7 of the Conspiracy and Protection of Property Act, 1875.

(2.) That it was admitted or proved that no violence was threatened by the appellants, and that, therefore, there could be no legal intimidation within the meaning of the Act.

(3.) That the appellants had a legal right to ask the prosecutor's workmen not to work with non-union workmen, and that a statement by them that they would exercise their legal right to induce union workmen to cease work where non-union men were employed could not be construed into a threat or intimidation.

(4.) That the action of the appellants in requesting the prosecutor's workmen to leave their work was no offence, and, therefore, the mere statement that they would do so can be no offence.

Then followed elaborate arguments to sustain the above points, several cases in support being quoted.

The case was tried in the Royal Courts of Justice, Queen's Bench Division, on April 20th, 1891, before the Lord Chief Justice and four other Judges. Sir Henry James appeared for the appellants, instructed by Messrs. Shaen, Roscoe, & Co. Sir Henry James stated the case at considerable length, quoting cases, and answering the Judges when they interposed questions. The judgment of the Court was pronounced on July 14th, 1891, by the Lord Chief Justice, with the full and unanimous concurrence of the other four Judges. The judgment reviewed the several cases bearing upon the points raised—*Connor v. Kent*, *Gibson v. Lawson*, *The Queen v. Druitt*, *Hilton v. Eckersley*, *Walesby v. Auly*, *The Queen v. Bunn*, etc., and then came to the case specially before the Court, of *Curran v. Treleaven*. The Lord Chief Justice dealt with the case as stated by the Recorder in detail, citing the facts of the case, and the learned Recorder's comments and decisions thereupon. The judgment said: "We are unable to agree with him," "that the facts stated constituted intimidation within the words of the section" (§ 7). "For these reasons, we are of opinion that the judgment of the learned Recorder cannot be sustained, and it must accordingly be reversed, and the conviction quashed."

Practically, therefore, the four points raised by the appellants are sustained as matters of legal right.

C. FRIENDLY SOCIETIES ACT, 1875, § 28.

Trade
unions to
be within
s. 28 of
Friendly
Societies
Act, 1875.

§ 2 of the Trade Union Act Amendment Act, 1876, says :—
“Notwithstanding anything in § 5 of the principal Act contained, a trade union, whether registered or nnregistered, which insures or pays money on the death of a child under ten years of age shall be deemed to be within the provisions of § 28 of the Friendly Societies Act, 1875.”

Applies to
all trade
unions
registered
or un-
registered.

It is important to bear in mind that this section applies alike to all trade unions whether registered or unregistered, which insures or pays money on the death of a child under ten years of age; as some difficulty has already arisen with regard to its provisions the entire section is here given :—

Payments
on death of
children.
Limitation
of pay-
ments.

“With respect to payments on the death of children under ten years of age, the following provisions shall have effect:

“(1.) No society shall insure or pay on the death of a child under five years of age any sum of money which, added to any amount payable on the death of such child by any other society, exceeds six pounds, or on the death of a child under ten years of age any sum of money which, added to any amount payable on the death of such child by any other society, exceeds ten pounds.

Who may
receive
payments.

“(2.) No society shall pay any sum on the death of a child under ten years of age except to the parent of such child, or to the personal representative of such parent, and upon the production by such parent or his personal representative of a certificate of death issued by the registrar of deaths, or other person having the care of the register of deaths, containing the particulars after mentioned.

Particulars
of certifi-
cates.

“(3.) Whenever a certificate of the death of a child is applied for, for the purpose of obtaining a sum of money from a society, the name of such society and the sum sought to be obtained therefrom shall be stated to the registrar of deaths, who shall write on or at the foot of such certificate the words ‘to be produced to the society’ (naming the same) ‘said to be liable for payment of the sum of £ ’ (stating the same); and all certificates of the same death shall be numbered in consecutive order, and the sum charged by the registrar of deaths for each such certificate shall not exceed one shilling.

Registrars
of deaths
only to give
certificates
in certain
cases.

“(4.) No registrar of deaths shall give any one or more certificates of death for the payment in the whole of any sum of money exceeding six pounds on the death of a child under five years, or for the payment in the whole of a sum exceeding ten pounds on the death of a child under ten years; and no such certificate

shall be granted unless the cause of death has been previously entered in the register of deaths on the certificate of a coroner or of a registered medical practitioner who attended such deceased child during its last illness, or except upon the production of a certificate of the probable cause of death under the hand of a registered medical practitioner, or of other satisfactory evidence of the same.

“(5.) Any society to which is produced a certificate of the death of a child which does not purport to be the first shall, before paying any money thereon, be bound to inquire whether any and what sums of money have been paid on the same death by any other society. Inquiry to be made by societies.

“(6.) It shall be an offence under this Act—

“(a.) If any society pays money on the death of a child under ten years of age otherwise than is provided by this Act; Offences under this section.

“(b.) If any parent or personal representative of a parent claiming money on the death of a child produces any certificate of such death other than is herein provided to the society or societies from which the money is claimed, or produces a false certificate, or one fraudulently obtained, or in any way attempts to defeat the provisions of this Act with respect to payments upon the death of children.

“(7.) The word ‘society’ in the present section shall include all industrial assurance companies assuring the payment of money on the death of children under the age of ten years. Extent of word “Society.”

“(8.) No assurance made or to be made by any industrial assurance company, of a sum of money payable on the death of a child under the age of ten years, which would be valid if effected with a registered society, shall be invalidated by reason of any provision contained in the Act 14 Geo. III. c. 48, for regulating insurances upon lives and for prohibiting all such insurances except in cases where the person insuring shall have an interest in the life of the persons insured. Assurances on children's lives not to be void under 14 Geo. III. c. 48.

“(9.) Provided that nothing in this section contained shall apply to insurances on the lives of children of any age, where the person insuring has an interest in the life of the person insured, or to existing contracts. Insurable interests.”

D. SPECIALLY AUTHORISED SOCIETIES.

Under the Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), § 8, Sub-section 5, and § 9, Special Authorities.

Special authorities, open to all Societies which may avail themselves of them, have been granted by the Treasury, all being limited to certain provisions of the Acts. Some Societies which partake of the character of Trade Unions, but which do not fulfil the purposes, or any one of them, enumerated in the definition of a Trade Union, as given in the Amendment Act, 1876, § 16, have been registered as "Specially Authorised Societies," under the powers conferred by the above Act upon the Treasury. The objects of such Societies are set forth in the following complete list of all the purposes authorised up to date :—

1. (16th May, 1876.) "To create funds by monthly or other subscriptions to be lent out to, or invested for the members of a society for their benefit—pursuant to the statute 38 & 39 Vict. c. 60," § 9.
2. (20th March, 1877.) "Assisting members out of employment.
3. (22nd March, 1877.) "Protecting and defending members of any lawful trade or calling against frivolous, vexatious, or malicious prosecutions, and in cases of robbery and other crimes, affording them legal or other assistance for the detection and prosecution of offenders."
4. (23rd March, 1877.) "Promoting agriculture or horticulture." This has since been modified by the Lords of the Treasury, and has now been placed on the same footing as all other later authorities, with the exception of its allowing the application of § 31 of the Friendly Societies Act, 1875, as to recoverable contributions.
5. (23rd March, 1877.) "Promoting Temperance and Economy by taking small deposits."
6. (31st January, 1878.) "Guaranteeing, pursuant to 38 & 39 Vict. c. 60, § 20, the performance of their duties by officers of Friendly Societies or branches."
7. (6th April, 1878.) "The playing the game of Quoits."
8. (5th July, 1878.) "The promotion of Literature, Science, and the Fine Arts."
9. (3rd October, 1879.) "The promotion of a knowledge of Music."

10. (1st June, 1882.) "The receipt of the Funds of Friendly Societies and branches, and the investment of the same for their benefit." (Unlimited.)
11. (18th December, 1883.) "Enabling persons of the Jewish religion to provide for the due celebration of the Passover."
12. (24th March, 1888.) "The encouragement and promotion of the riding of Bicycles and similar machines."
13. (10th April, 1890.) For "the promotion of Education." The limitations in this case being the same as those of the special authorities of 3rd July, 1878, and 3rd October, 1879, "for the promotion of Literature, Science, and the Fine Arts," and "for the promotion of a knowledge of Music."
14. (4th March, 1891.) For "the promotion of the Science and Art of Cookery," the authority being subject to the same limitation as those of the authority of the 10th April, 1890, "for the promotion of Education."
15. (27th February, 1893.) "Providing the members with legal and other assistance when claiming compensation under the Employers' Liability Acts." It will be well for the legal adviser of the society in this case to see that it does not offend against the Law relating to Maintenance or Champerty.
16. (8th May, 1893.) For "the Mutual Protection and promotion of the interests of Friendly Societies."
17. (15th June, 1893.) "The promotion of the pursuit of Angling."

E. TEMPERTON *v.* RUSSELL AND OTHERS.

COMMON LAW ACTION.

This was an action brought by Mr. Joseph Temperton, a builder carrying on business at Hull, against Mr. John Russell (President of the Hull Branch of the Operative Bricklayers' Society) and others to recover £1,000 damages for the alleged wrongful acts of the defendants, in procuring and inducing certain other persons to break their contracts with the plaintiff. The action arose out of a strike by the bricklayers, plasterers, and labourers employed by the plaintiff in consequence of his refusal to carry out one of the working rules adopted by the Hull Master Builders on the one part, and the Bricklayers,

Plasterers, and Labourers on the other part. In consequence of this strike workmen at other establishments refused to use the goods supplied by the plaintiff, who thereby, as he alleged, lost several contracts and suffered considerable damage. He thereupon sued the defendants in the Queen's Bench Division of the High Court of Justice, to recover damages.

The case was tried before Mr. Justice Collins and a special jury at York on March 21st, 1893, when the jury found a verdict for the plaintiff with £250 damages and costs. The defendants then applied to the Court of Appeal to set aside the judgment, or for a new trial. The application was heard and argued before Lord Esher, Master of the Rolls, Lord Justice Lopes, and Lord Justice A. L. Smith on the 13th, 14th, and 17th April, 1893, when it was held that an action was maintainable by the plaintiff against the defendants for maliciously procuring breaches of contract, and for maliciously conspiring together to injure him by preventing persons from entering into contracts with him, and the appeal was dismissed. Lord Esher in giving judgment said :

"It appears to me that the combination was wrongful both with respect to the interference with existing contracts, and with respect to the prevention of contracts being entered into in the future. I cannot doubt that there was evidence from which the jury might find that people were prevented from dealing with the plaintiff by the resolution of the joint committee, and the action taken by the defendants, and that the plaintiff was thereby injured." Lord Justice Lopes said: "It has been contended that the damage to the plaintiff must be considered to have arisen from the spontaneous action of individual workmen; but I cannot think that that view is maintainable. We know something of the action of Trade Unions and their officials. So far from the injury to the plaintiff arising from the men acting of their own accord, I think it is clear that if it had not been for the fear of the Trade Unions and of the consequences of breaking the compacts which they had entered into as members of the Unions, there would have been no question of the men withdrawing from their employ. I think it was shown that Russell acted in what he did as the delegate and under the instruction of the joint committee of the three Trade Unions of which the other defendants were members, and therefore I think that the other defendants occupy the same position as he does."

Lord Justice A. L. Smith said that the learned Judge who tried the case had directed the jury that "it is perfectly clear law that to induce a person who has made a contract with another to break that contract in order to hurt the person with whom it has been made, to hamper him in his trade, or to put undue pressure upon him, or to procure some indirect advantage for the person

himself, is, in point of law, to do it maliciously, and a cause of action would be established." Lord Justice Smith went on to say that this was correct in point of law, and he added: "It does appear to me that if a strike were used for the purpose, and with the intent above mentioned, an action would lie."

It will be seen, from the decision of the Court of Appeal, and from the above extracts from the judgments delivered by the Court, that this case is one of the greatest importance to Trade Unionists. It is much to be regretted that the bankruptcy of the defendants, following as a result of the action and decision of the Court, prevented the case being heard upon its merits in the House of Lords.

According to the above decision it would appear that any officer of a Trade Union taking an active part in calling out men from their employment in any case where there is a labour dispute, although protected from a criminal prosecution by § 2 of the Trade Union Act, 1871, is still liable to be proceeded against by civil action for damages. The question arises whether employers acting together in locking out their workmen might not be proceeded against in the same way. Moreover, did not the particular employer, who was plaintiff in the case, legally break a joint contract of employers and employed, thereby injuring, in some degree, the defendants? In the case of "chair-marking," or other devices for preventing men getting employment, will not the same law apply?

The decision in this case throws considerable doubt upon the right of combination for such trade purposes, as was supposed to have been secured by the Trade Union Acts. If the law operates in a one-sided way, instead of securing equality of conditions to workmen and employers alike, Trade Unionists will have seriously to consider whether some further amendment of the law is not absolutely necessary, in order to secure the full benefits intended by the Trade Union Acts.

F. INTERFERENCE WITH CONTRACTS.

In a Divisional Court of Queen's Bench, on November 1st, 1894, there was a case of some importance to Trade Unionists with respect to alleged interference with contracts. The case was *Wright & Co. v. Hennessey*. Mr. Chitty on behalf of the plaintiffs sought to continue an interim injunction, granted by the Lord Chief Justice, restraining Mr. Hennessey and others

from interfering with the works of the plaintiffs, at the Pavilion Theatre, Whitechapel, and elsewhere, by notifying that the men belonging to the National Association of Operative Plasterers would cease work if certain men continued to be employed. Mr. Wright was discharged in consequence of this interference. No actual decision was given in the case because the defendant, Mr. Hennessey, expressed his willingness to give an undertaking not to persist in the course of action complained of till the trial of the action then pending was disposed of. The Court sanctioned the proposed undertaking, but declined to grant the order asked for, as "there was no case in the present instance for interfering in a conflict." The plaintiffs had to pay the costs of the application in the case. The legal points involved will, however, have to be decided when the trial of the action comes on in the Court of Appeal.

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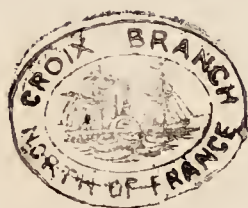
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